

RECORDATION NO. 13034

APR 1 - 1981-3 50 PM  
INTERSTATE COMMERCE COMMISSION

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STEWART R. BROSS, JR.  
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212 HANOVER 2-3000

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CABLE ADDRESSES  
CRAVATH, N. Y.  
CRAVATH, PARIS  
CRAVATH, LONDON E. C. 2

RECORDATION NO. 13034-B No.

APR 1 - 1981-3 50 PM

INTERSTATE COMMERCE COMMISSION

Date APR 1 1981

Fee \$ 100.00

ICC Washington, D. C.

April 1, 1981

RECORDATION NO. 13034-C

APR 1 - 1981-3 50 PM  
INTERSTATE COMMERCE COMMISSION

Allied Chemical Corporation  
Lease Financing Dated as of March 15, 1981  
14% Conditional Sale Indebtedness Due 1996

Dear Ms. Mergenovich:

Pursuant to 49 U.S.C. § 11303 and the Commission's rules and regulations thereunder, as amended, I enclose herewith on behalf of Allied Chemical Corporation, for filing and recordation counterparts of the following documents:

*New Number*  
(1) (a) Conditional Sale Agreement dated as of March 15, 1981, between Trinity Industries, Inc. and Exchange National Bank of Chicago, as Trustee; and

*- A*  
(b) Agreement and Assignment dated as of March 15, 1981, between Trinity Industries, Inc. and LaSalle National Bank, as Agent.

*- B*  
(2) (a) Lease of Railroad Equipment dated as of March 15, 1981, between Allied Chemical Corporation and Exchange National Bank of Chicago, as Trustee; and

*- C*  
(b) Assignment of Lease and Agreement dated as of March 15, 1981, between Exchange National Bank of Chicago, as Trustee, and LaSalle National Bank, as Agent.

RECORDATION NO. 13034-A

APR 1 - 1981-3 50 PM  
RECEIVED  
INTERSTATE COMMERCE COMMISSION

I.C.C.  
FEE OPERATION BR.

COUNSEL  
MURICE T. MOORE  
CAROL E. MAW  
COMMISSION

ROSWELL L. GILPATRICK  
ALBERT R. CONNELLY  
L. R. BRESLIN, JR.  
GEORGE B. TURNER  
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ALLEN H. MERRILL

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75008 PARIS, FRANCE  
TELEPHONE: 265-81-54  
TELEX: 290530

33 THROGMORTON STREET  
LONDON, EC2N 2BR, ENGLAND  
TELEPHONE 1-606-1421  
TELEX: 8814901

*Charles Mergenovich - New Number 13034-C*

The names and addresses of the parties to the  
aforementioned Agreements are as follows:

(1) Vendor-Assignee-Agent:

LaSalle National Bank,  
135 South LaSalle Street,  
Chicago, Illinois 60690.

(2) Trustee-Owner-Trustee:

Exchange National Bank of Chicago,  
130 South LaSalle Street,  
Chicago, Illinois 60603.

(3) Builder-Vendor:

Trinity Industries, Inc.,  
P. O. Box 10587,  
Dallas, Texas 75207.

(4) Lessee:

Allied Chemical Corporation,  
P. O. Box 1219 R,  
Columbia Road and Park Avenue,  
Morristown, New Jersey 07960.

Please file and record the documents referred to in  
this letter and index them under the names of the Vendor-  
Assignee-Agent, the Trustee-Owner-Trustee, the Builder-Vendor  
and the Lessee.

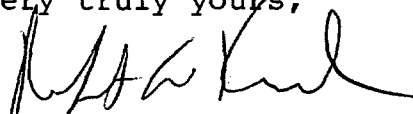
The equipment covered by the aforementioned docu-  
ments consists of the following:

145 13,500 gallon coiled insulated tank cars,  
AAR Mechanical Designation 111A 100 W 3, bearing the  
Lessee's identification numbers AFPX 413213-413357,  
both inclusive.

There is also enclosed a check for \$100 payable to  
the Interstate Commerce Commission, representing the fee for  
recording the Conditional Sale Agreement and related Agree-  
ment and Assignment (together constituting one document), and  
the Lease of Railroad Equipment and related Assignment of  
Lease and Agreement (together constituting one document).

Please stamp all counterparts of the enclosed documents with your official recording stamp. You will wish to retain one copy of the instruments for your files. It is requested that the remaining counterparts be delivered to the bearer of this letter.

Very truly yours,



Robert A. Kindler  
As Agent for  
Allied Chemical Corporation

Agatha L. Mergenovich, Secretary,  
Interstate Commerce Commission,  
Washington, D. C. 20423

Encls.

**Interstate Commerce Commission**  
Washington, D.C. 20423

OFFICE OF THE SECRETARY

Robert A. Kindler  
Cravath, Swaine, & Moore  
One Chase Manhattan Plaza  
New York, N. Y. 10005

Dear Sir:

The enclosed document(s) was recorded pursuant to the provisions of Section 11303 of the Interstate Commerce Act, 49 U.S.C. 11303, on 4/1/81 at 3:50PM, and assigned recordation number(s). 13034, 13034-A, 13034-B, & 13034-C

Sincerely yours,

*Agatha L. Mergenovich*  
Agatha L. Mergenovich  
Secretary

Enclosure(s)



RECORDATION NO. 1309425

Trinity

APR 1 - 1981-3 50 PM

INTERSTATE COMMERCE COMMISSION

[CS&M Ref. 4876-027]

CONDITIONAL SALE AGREEMENT

Dated as of March 15, 1981

Between

TRINITY INDUSTRIES, INC.

and

EXCHANGE NATIONAL BANK OF CHICAGO,  
not in its individual capacity but solely as  
trustee under the Trust Agreement  
dated as of the date hereof with  
Republic National Leasing Corporation.

14% Conditional Sale Indebtedness Due 1996

[Covering 145 Tank Cars]

## CONDITIONAL SALE AGREEMENT

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\* This Table of Contents has been included for convenience only and does not form a part of this document.

CONDITIONAL SALE AGREEMENT dated as of March 15, 1981, between TRINITY INDUSTRIES, INC., a Texas corporation ("Trinity" or "Vendor" as the context may require, as set forth in Section 1.3 hereof), and EXCHANGE NATIONAL BANK OF CHICAGO, a national banking association, acting not in its individual capacity but solely as trustee ("Trustee") under the Trust Agreement dated as of the date hereof ("Trust Agreement") with REPUBLIC NATIONAL LEASING CORPORATION, a Texas corporation ("Owner").

Trinity has agreed to conditionally sell to the Trustee, subject to the terms and conditions hereof, the railroad equipment described in Annex B hereto ("Equipment").

The Trustee is entering into a Lease of Railroad Equipment with ALLIED CHEMICAL CORPORATION ("Lessee"), substantially in the form of Annex C hereto ("Lease").

LA SALLE NATIONAL BANK ("Agent") is acting as agent for certain investors including an interim investor ("Interim Investor") (the investors and the Interim Investor hereinafter called the "Investors") pursuant to a Participation Agreement dated as of the date hereof ("Participation Agreement") among the Lessee, the Agent, the Owner, the Trustee and such Investors.

In consideration of the agreements hereinafter set forth, the parties hereto hereby agree as follows:

#### ARTICLE 1. ASSIGNMENT; DEFINITIONS

1.1. Contemplated Sources of Purchase Price; Assignment. The parties hereto contemplate that the Trustee will furnish 31.542065% of the Purchase Price (as defined in Section 4.1 hereof) of the Equipment and that an amount equal to the balance of such Purchase Price shall be paid to Trinity by the Agent pursuant to an Agreement and Assignment dated as of the date hereof ("CSA Assignment") between Trinity and the Agent.

1.2. Lease Assignment. As security for the

payment and performance of all the Trustee's obligations hereunder, the Trustee will assign to the Agent certain of the rights, title and interests of the Trustee in and to the Lease pursuant to an Assignment of Lease and Agreement substantially in the form of Annex D hereto ("Lease Assignment"), and the Lessee shall acknowledge and consent thereto pursuant to a Consent and Agreement substantially in the form attached to the Lease Assignment ("Consent").

1.3. Meaning of "Trinity" and "Vendor". The term "Trinity", whenever used in this Agreement, means, both before and after any assignment of its rights hereunder, Trinity Industries, Inc., and any successor or successors to its properties and business. The term "Vendor", whenever used in this Agreement, means Trinity before any assignment of its rights and, after any such assignment, both any assignee as regards any assigned rights and also any assignor as regards any rights retained by such assignor.

## ARTICLE 2. CONSTRUCTION AND SALE

Trinity shall construct the Equipment at its plant or plants set forth in Annex B hereto and will sell and deliver the Equipment to the Trustee. Each unit of Equipment shall be constructed in accordance with the specifications referred to in Annex B and the Purchase Order (as hereinafter defined) hereto and in accordance with such modifications thereof as may be agreed upon in writing between Trinity, the Trustee and the Lessee (such specifications and any modifications called "Specifications"). The design, quality and component parts of each unit of Equipment shall conform, on the date of delivery and acceptance thereof, to all United States Department of Transportation and Interstate Commerce Commission requirements and specifications and to all standards, if any, recommended by the Association of American Railroads reasonably interpreted as being applicable to each such unit of Equipment and each such unit will be new railroad equipment when delivered to the Trustee and the original use thereof shall commence with the Trustee.

## ARTICLE 3. INSPECTION AND DELIVERY

3.1. Place of Delivery. Trinity will deliver the Equipment to the Trustee at the place or places speci-

fied in Annex B hereto (or if Annex B does not specify a place or places, at the place or places designated from time to time by the Trustee), freight charges and storage charges, if any, prepaid, in accordance with the delivery schedule set forth in Annex B hereto; provided, however, that Trinity shall not have any obligation to deliver any unit of Equipment hereunder subsequent to the commencement of any proceedings specified in clause (c) or (d) of Section 16.1 hereof or subsequent to the occurrence of any event of default as described in Section 16.1 hereof or of any event which with the giving of notice or lapse of time or both would constitute such an event of default. Trinity agrees not to deliver any unit of Equipment hereunder (a) following receipt of written notice from the Trustee or the Agent of the commencement of any such proceedings or the occurrence of any such event, as aforesaid, (b) until it receives notice from the Agent, the Trustee or their counsel on their behalf, that the respective conditions contained in Articles VII and VIII of the Participation Agreement have been met, or (c) following receipt of written notice from the Agent or the Trustee of the Agent's or the Trustee's determination that there has been a materially adverse change in the condition, financial or otherwise, of the Lessee from that which existed on December 31, 1980.

3.2. Force Majeure. The obligations of Trinity as to time of delivery are subject to delays resulting from causes beyond Trinity's reasonable control, including but not limited to acts of God, acts of government such as embargoes, priorities and allocations, war or war conditions, riots or civil commotion, sabotage, strikes, differences with workmen, accidents, fires, floods, explosions, damage to plant, equipment or facilities, delays in receiving necessary materials, delays of carriers or subcontractors.

3.3. Exclusion of Equipment. Notwithstanding the provisions of Section 3.2 hereof, any unit of Equipment not delivered to the Trustee pursuant to Section 3.1 hereof and any unit of Equipment not delivered and accepted by the Trustee hereunder on or before June 30, 1981, shall be excluded from this Agreement, and the Trustee shall be relieved of its obligations hereunder to purchase and pay for such Equipment. If any unit of Equipment shall be so excluded, the parties hereto shall execute an agreement supplemental hereto limiting this Agreement to the units of

Equipment not so excluded herefrom. In the event of any such exclusion of any unit of Equipment herefrom pursuant to the foregoing provisions or pursuant to Section 4.1 hereof, or in the event the Trustee is relieved of its obligations hereunder to accept or pay for any or all units of Equipment in accordance with the terms and conditions hereof for any reason whatsoever, the Lessee will be obligated pursuant to Article I of the Participation Agreement to accept all such units completed and delivered by Trinity and to pay the full purchase price therefor when due, all in accordance with the terms of its prior contractual arrangements with Trinity relating to the Equipment (the "Purchase Order"), and the Trustee will reassign, transfer and set over to Trinity and the Lessee, as their respective interests shall appear, all the right, title and interest of the Trustee in and to the units so excluded and the Purchase Order to the extent relating thereto. The Trustee agrees, upon any such exclusion, to take such steps including the execution of instruments of transfer, as may be reasonably requested by the Lessee for the purpose of acknowledging and perfecting the interest of the Lessee in any unit of equipment so excluded from this Agreement.

3.4. Inspection. During construction, the Equipment shall be subject to inspection and approval by the authorized inspectors of the Trustee (who may be employees and agents of the Lessee), and Trinity shall grant to such authorized inspectors reasonable access to the plant at which the units of Equipment are being constructed. Prior to delivery to the Trustee by Trinity, each unit of Equipment shall be presented to an authorized inspector of the Trustee for inspection at the place specified for delivery of such unit, and if such unit conforms to the Specifications, requirements and standards applicable thereto, such authorized inspector shall execute and deliver to Trinity a certificate of acceptance ("Certificate of Acceptance") stating that such unit has been inspected and accepted on behalf of the Trustee and is marked in accordance with Article 10 hereof; provided, however, that Trinity shall not thereby be relieved of its warranties referred to in Articles 2 and 14 hereof. By § 2 of the Lease and by this Section 3.4, the Trustee hereby appoints the Lessee its agent to inspect and accept delivery of the Equipment. Acceptance of any unit of Equipment by the Lessee (or its employees or agents, as aforesaid) pursuant to § 2 of the Lease shall be deemed to be acceptance of such unit hereunder by the Trustee.

3.5. Trinity's Responsibilities After Delivery.  
Upon delivery to and acceptance by the Trustee of units of Equipment at the place specified for delivery, Trinity shall have no further responsibility for nor bear any risk of any damage to or the destruction or loss of any such unit; provided, however, that Trinity shall not thereby be relieved of its warranties referred to in Articles 2 and 14 hereof.

#### ARTICLE 4. PURCHASE PRICE AND PAYMENT

4.1. The base price or prices per unit of the Equipment are set forth in Annex B hereto. Such base price or prices are subject to such increase or decrease as is agreed to by Trinity, the Trustee and the Lessee. The term "Purchase Price" as used herein shall mean the base price or prices as so increased or decreased and as set forth in Trinity's invoice or invoices delivered to the Trustee and, if the Purchase Price is other than the base price or prices set forth in Annex B, the invoice or invoices shall be accompanied by, or have endorsed thereon, the agreement or approval of the Lessee and the Trustee (such invoice or invoices being hereinafter called the Invoices). If on any Closing Date (as hereinafter defined in this Article) the aggregate Purchase Price of Equipment for which settlement has theretofore been and is then being made under this Agreement would, but for the provisions of this sentence, exceed the Maximum Purchase Price specified in Item 4 of Annex A hereto (or such higher amount as the Trustee may at its option agree to prior to delivery of any unit or units of Equipment that, but for such agreement, would be excluded from this Agreement), Trinity (and any assignee of Trinity) and the Trustee will enter into an agreement excluding from this Agreement such unit or units of Equipment then proposed to be settled for in inverse order of their delivery pursuant to Article 3 hereof, as will, after giving effect to such exclusion, reduce such aggregate Purchase Price under this Agreement to not more than the Maximum Purchase Price specified in Item 4 of Annex A hereto (or such higher amount as aforesaid), and the Trustee shall take such other steps, including the execution of instruments of transfer, as it may be reasonably requested by the Lessee for the purpose of acknowledging and perfecting the interest of the Lessee in any unit of Equipment so excluded from this Agreement, and the Trustee shall have no further obligation or liability in respect of units so excluded.

4.2. Settlement and Closing Dates. The Equipment shall be settled for in such number of groups of units of Equipment delivered to and accepted by the Trustee as is provided in Item 1 of Annex A hereto. The term "Closing Date" with respect to any group of units shall be such date as is specified by the Lessee in accordance with Item 1 of Annex A hereto by six business days' written notice thereof with the concurrence of the Trustee and the Agent, but in no event shall such Closing Date be later than June 30, 1981. Such notice shall specify the aggregate Purchase Price of the Equipment to be settled for and a copy thereof shall be sent by the Lessee to the Agent and the Trustee. The place of each closing shall be determined by mutual agreement among the parties hereto. At least five business days prior to any Closing Date, Trinity shall present the Invoice to the Trustee and the Lessee for the Equipment to be settled for. The term "business day" as used herein means any calendar day, excluding Saturdays, Sundays and any other day on which banking institutions in Chicago, Illinois, or Dallas, Texas, are authorized or obligated to remain closed.

4.3. Indebtedness of Trustee to Vendor. Subject to the terms of this Agreement and the satisfaction of the conditions set forth in the Participation Agreement, the Trustee hereby acknowledges itself to be indebted to the Vendor in the amount of the aggregate Purchase Price of the Equipment to be settled for and hereby promises to pay the same in cash or immediately available funds to the Vendor at such place as the Vendor may designate, as follows:

(a) on each Closing Date, an amount equal to 31.542065% of the aggregate Purchase Price of the Equipment for which settlement is being made; and

(b) in 29 semiannual installments, as hereinafter provided, an amount equal to the aggregate Purchase Price of the Equipment for which settlement is being made less the aggregate amount paid or payable with respect thereto pursuant to subsection (a) of this Section (said portion of the aggregate Purchase Price payable in installments called "CSA Indebtedness").

4.4. CSA Indebtedness; Payment Dates; Interest.  
(a) The installments of the CSA Indebtedness shall be payable semiannually on January 2 and July 2 in each year, commencing on January 2, 1982 (each such date a "Payment Date").



The unpaid balance of the CSA Indebtedness shall bear interest from the Closing Date in respect of which such indebtedness was incurred at the rate of 14% per annum, except that until each Take-Out Date (as defined in the Participation Agreement), the Interim Investor's interest in the CSA indebtedness ("Interim Investor's Interest") to be acquired on such Take-Out Date by the Take-Out Investor (as defined in the Participation Agreement) shall bear interest at the Interim Rate (as hereinafter defined). Interest on the unpaid balance of the CSA Indebtedness shall be payable to the extent accrued on July 2, 1981, and semiannually on each Payment Date thereafter, and in the case of the Interim Investor, interest on the unpaid balance of the Interim Investor's Interest shall also be payable to the extent accrued on September 15, 1981. The amounts of principal of and interest on the CSA Indebtedness payable on each Payment Date shall be calculated to be substantially in proportion to the amount and allocation of principal and interest on such Payment Date set forth in Schedule I hereto (subject to the provisions of Article 7 hereof) and the aggregate of such installments of principal and interest shall completely amortize the CSA Indebtedness at maturity. The Trustee will furnish to the Vendor and the Lessee a schedule showing the respective amounts of principal and interest payable on each Payment Date promptly after the last Closing Date, in such number of counterparts as shall be requested by the Vendor. The term "Interim Rate" shall mean the higher of (x) 1.5% over the three-month Certificate of Deposit rate as published in the Wall Street Journal on the Interim Investor's first Deposit Date under the Participation Agreement and (y) 1.5% over the three-month Certificate of Deposit rate as published in the Wall Street Journal on the Interim Investor's second Deposit Date under the Participation Agreement.

(b) If any of the dates for payment of principal or interest is not a business day, such payment shall be payable on the succeeding business day, and no interest shall be payable for the period from and after the nominal date for payment thereof to such next succeeding business day.

4.5. Calculation of Interest. Interest under this Agreement shall be calculated on the basis of a 360-day year of 12 30-day months, except that the interest accrued to July 2, 1981, and interest in respect of the

Interim Investor's Interest accrued to September 15, 1981, shall be calculated on an actual days elapsed, 365-day year basis.

4.6. Penalty Interest. The Trustee will pay interest, to the extent legally enforceable, at the rate of 15% per annum and at the rate of 1% per annum over the Interim Rate for the Interim Investor's Interest ("Penalty Rate") upon all amounts remaining unpaid on the CSA Indebtedness after the same shall have become due and payable pursuant to the terms hereof or such lesser amount as shall be legally enforceable, anything herein to the contrary notwithstanding.

4.7. Currency of Payment. All payments provided for in this Agreement shall be made by bank wire transfer of Federal funds in such coin or currency of the United States as at the time of payment shall be legal tender for the payment of public and private debts. Except as provided in Articles 7 and 16 hereof, the Trustee shall not have the privilege of prepaying any portion of the CSA Indebtedness prior to the date on which it becomes due.

4.8. Liability of Trustee Limited to "Income and Proceeds from Equipment". Notwithstanding any other provision of this Agreement (including but not limited to any provision of Articles 16 and 17 hereof, except as set forth in this Section 4.8), but not limiting the effect of Article 22 hereof, the liability of the Trustee or any assignee of the Trustee for any and all payments to be made by it under this Agreement, with the exception only of the payments to be made pursuant to Section 4.3(a) hereof and the payment of interest on the Interim Investor's Interest on September 15, 1981, pursuant to Section 4.4(a) hereof (which shall be made by the Trustee solely from funds provided to the Trustee by the Owner for the purpose of enabling the Trustee to make such payments) and the proviso to Section 13.3 hereof, shall not exceed an amount equal to and shall be payable only out of the "income and proceeds from the Equipment", and such payments shall be made by the Trustee only to the extent that the Trustee or any assignee of the Trustee shall have actually received sufficient "income and proceeds from the Equipment" to make such payments. Except as provided in the preceding sentence, the Trustee shall have no liability to make any payments under this Agreement whatsoever except from the "income and proceeds from the Equipment" to the extent actually received by the Trustee or any assignee of

the Trustee. As used herein the term "income and proceeds from the Equipment" shall mean:

(i) if one of the events of default specified in Section 16.1 hereof shall have occurred and while it shall be continuing, so much of the following amounts as are indefeasibly received by the Trustee or any assignee of the Trustee at any time after any such event and during the continuance thereof: (a) all amounts of rental and amounts in respect of a Casualty Occurrence (as defined in § 7 of the Lease) paid for or with respect to the Equipment pursuant to the Lease and any and all other payments received under § 13 or any other provision of the Lease (except any indemnity paid or payable to the Trustee or the Owner pursuant to §§ 6 and 9.5 of the Lease and under the Indemnity Agreement (as defined in the Participation Agreement)) and (b) any and all payments or proceeds received for or with respect to the Equipment as the result of the sale, lease or other disposition thereof, after deducting all costs and expenses of such sale, lease or other disposition; and

(ii) at any other time only that portion of the amounts referred to in clauses (a) and (b) of subsection (i) above (not including amounts paid by the Lessee to the Trustee as reimbursement of sums paid by the Trustee on account of prior defaults under § 10 of the Lease) as are indefeasibly received by the Trustee or any assignee of the Trustee and as shall equal the portion of the CSA Indebtedness (including prepayments thereof required in respect of a Casualty Occurrence) and/or interest thereon due and payable on the date such amounts were required to be paid pursuant to the Lease or as shall equal any other payments then due and payable under this Agreement;

it being understood that "income and proceeds from the Equipment" shall in no event include amounts referred to in the foregoing clauses (a) and (b) which were received by the Trustee or any assignee of the Trustee prior to the existence of such an event of default which exceeded the amounts required to discharge that portion of the CSA Indebtedness (including prepayments thereof required in respect of a Casualty Occurrence) and/or interest thereon due and payable on the date on which amounts with respect thereto received by the Trustee or any assignee of the Trustee were required to be paid to it pursuant to the Lease or which exceeded any other payments due and payable

under this Agreement at the time such amounts were payable under the Lease. Nothing contained herein limiting the liability of the Trustee shall derogate from the right of the Vendor to proceed against the Equipment as provided for herein for the full unpaid Purchase Price of the Equipment and interest thereon and all other payments and obligations hereunder. Notwithstanding anything to the contrary contained in Article 16 or 17 hereof, the Vendor agrees that in the event it shall obtain a judgment against the Trustee for an amount in excess of the amounts payable by the Trustee pursuant to the limitations set forth in this Section, it will, accordingly, limit its execution of such judgment to amounts payable pursuant to the limitations set forth or referred to in this Section.

#### ARTICLE 5. SECURITY INTEREST IN EQUIPMENT

5.1. Vendor To Retain Security Interest; Accessions Are Part of Equipment. The Vendor hereby retains a security interest in the Equipment until the Trustee shall have made all its payments under this Agreement and shall have kept and performed all its agreements herein contained, notwithstanding any provision of this Agreement limiting the liability of the Trustee and notwithstanding the delivery of the Equipment to and the possession and use thereof by the Trustee and the Lessee as provided in this Agreement and the Lease. Any and all parts installed on and additions and replacements made to any unit of Equipment (i) which are not readily removable without causing material damage to such unit, (ii) the cost of which is included in the Purchase Price of such unit, (iii) in the course of ordinary maintenance of the Units, or (iv) which are required for the operation or use of such unit in railroad interchange by the Applicable Laws (as defined in § 10.1 of the Lease) shall constitute accessions to the Equipment and shall be subject to all the terms and conditions of this Agreement and included in the term "Equipment" as used herein.

5.2. Obligations upon Payment of CSA Indebtedness. Except as otherwise specifically provided in Article 7 hereof, when and only when the Vendor shall have been paid the full indebtedness in respect of the Purchase Price of the Equipment, together with interest and all other payments as herein provided, absolute right to the possession of, title to and property in the Equipment shall pass to and vest in the Trustee without further transfer or action on the part of the Vendor, except that

the Vendor, if requested by the Trustee at that time, will (a) execute an instrument releasing its security interest in the Equipment and transferring such interest to the Trustee or upon its order, free of all liens, security interests and other encumbrances created or retained hereby and deliver such instrument to the Trustee at its address referred to in Article 21 hereof, (b) execute and deliver at the same place, for filing in all necessary public offices, such instrument or instruments in writing as may be necessary or appropriate in order then to make clear upon the public records the title of the Trustee to the Equipment and (c) pay to the Trustee any money paid to the Vendor pursuant to Article 7 hereof and not theretofore applied as provided therein. The Trustee hereby waives and releases any and all rights existing or that may be acquired in or to the payment of any penalty, forfeit or damages for failure to execute and deliver such instrument or instruments or to file any certificate of payment in compliance with any law or statute requiring the filing of the same, except for failure to execute and deliver such instrument or instruments or to file such certificate within a reasonable time after written demand by the Trustee.

## ARTICLE 6. TAXES

6.1. General Tax Indemnification. Whether or not any of the transactions contemplated hereby are consummated, the Trustee agrees to pay and to indemnify and hold the Vendor harmless from all Taxes (as defined in § 6 of the Lease) for which indemnification is required under the Lease; excluding, however, (i) Taxes measured solely by net income based upon the Vendor's receipt of payments provided for herein (other than payments due the Vendor under this Article 6 except those for which the Vendor is entitled to a corresponding deduction in the calculation of its net income) and franchise and value added taxes which are in lieu of such net income taxes; and (ii) any Taxes imposed on or measured by any fees or compensation received by the Vendor; provided, however, that the Trustee shall not be required to pay any Taxes during the period it may be contesting the same in the manner provided in Section 6.2 hereof.

6.2. Claims; Contests; Refunds. If claim is made against the Vendor for any Taxes indemnified against under this Article 6, the Vendor shall promptly notify the

Trustee. If reasonably requested by the Trustee in writing, the Vendor shall, upon receipt of any indemnity satisfactory to it for all costs, expenses, losses, legal and accountants' fees and disbursements, penalties, fines, additions to tax and interest, and at the expense of the Trustee, contest in good faith the validity, applicability or amount of such Taxes by (a) resisting payment thereof if possible, (b) not paying the same except under protest, if protest is necessary and proper, and (c) if payment is made, using reasonable efforts to obtain a refund thereof in appropriate administrative or judicial proceedings or both. The Trustee may also contest, at its own expense, the validity, applicability or amount of such Taxes in the name of the Vendor; provided that no proceeding or action relating to such contest shall be commenced (nor shall any pleading, motion, brief or other paper be submitted or filed in the name of the Vendor in any such proceeding or action) without the prior written consent of the Vendor, which consent shall not be unreasonably withheld. If the Vendor shall obtain a refund of all or any part of such Taxes previously reimbursed by the Trustee in connection with any such contest or an amount representing interest thereon, the Vendor shall pay the Trustee the amount of such refund or interest net of expenses; provided, however, that no event of default set forth in Section 16.1 hereof and no event which with notice or lapse of time or both would constitute such an event of default shall have occurred and be continuing.

6.3. Reports or Returns. In case any report or return is required to be made with respect to any obligation of the Trustee under or arising out of this Article 6, the Trustee shall either make such report or return in such manner as will show the interests of the Vendor in the Equipment or shall promptly notify the Vendor of such requirement and shall make such report or return in such manner as shall be satisfactory to the Vendor. All costs and expenses (including legal and accountants' fees) of preparing any such return or report shall be borne by the Trustee.

6.4. Survival. All of the obligations of the Trustee under this Article 6 shall survive and continue, notwithstanding payment in full of all other amounts due under this Agreement.

ARTICLE 7. MAINTENANCE; TERMINATION AND CASUALTY  
OCCURRENCES

7.1. Maintenance. The Trustee shall, at its own cost and expense, maintain and keep each unit of the Equipment in good operating order and repair, ordinary wear and tear excepted, and eligible for railroad interchange in accordance with the Applicable Laws (as defined in § 9 of the Lease) and in the same condition as other similar equipment owned or leased by the Lessee.

7.2. Termination; Casualty Occurrences. In the event that the Lease is terminated pursuant to § 7.7 of the Lease (a "Termination"), or any unit of Equipment shall suffer a Casualty Occurrence (as defined in § 7 of the Lease), the Trustee shall, promptly after it shall have received notice from the Lessee or has otherwise been informed of a Termination or that such unit has suffered a Casualty Occurrence, cause the Vendor to be fully informed in regard thereto by written notice; provided that, in the case of a Termination, the Trustee shall give such written notice to the Vendor no less than 30 days prior to the Settlement Date, as hereinafter defined. On the next succeeding date for the payment of an installment on the CSA Indebtedness (or, in the event such date will occur within 10 days of the delivery of notice, on the following payment date) after such notice from the Lessee has been received or on the Termination Date (as defined in § 7.7 of the Lease) in the case of a Termination (each such date hereinafter called a "Settlement Date"), the Trustee shall, subject to the limitations contained in Section 4.8 hereof, pay to the Vendor (i) in the case of a Casualty Occurrence, a sum equal to the Casualty Value (as defined in Section 7.3 hereof) of such unit suffering a Casualty Occurrence as of such Settlement Date, together with an amount equal to accrued interest thereon and (ii) in the case of a Termination a sum equal to the Termination Value (as defined in Section 7.4 hereof) of all units subject to the Lease as of such Settlement Date, together with an amount equal to accrued interest thereon (as hereinafter provided). The Trustee shall file, or cause to be filed, with the Vendor a certificate setting forth the Casualty Value of such unit or the Termination Value of all units subject to the Lease, as the case may be. Any money paid to the Vendor pursuant to this paragraph shall be applied (after the payment of principal and interest due on such date in respect of CSA Indebtedness not being prepaid) to prepay,

without penalty or premium except in the case of a Termination, ratably in accordance with the unpaid balance of each installment, the CSA Indebtedness, together with all interest accrued on the portion of the CSA Indebtedness being prepaid. The Trustee shall promptly cause to be furnished to the Vendor and the Lessee a revised schedule of payments of principal and interest thereafter to be made, in such number of counterparts as the Vendor and the Lessee may request, calculated as provided in Section 4.4 hereof.

7.3. Casualty Value. The Casualty Value of each unit of the Equipment suffering a Casualty Occurrence shall be deemed to be that portion of the original Purchase Price remaining unpaid on the date as of which such Casualty Value shall be determined (without giving effect to any prepayment or prepayments theretofore made under this Article with respect to any other unit). For the purpose of this paragraph and Paragraph 7.4 hereof, each payment of the Purchase Price made pursuant to Article 4 hereof shall be deemed to be a payment with respect to each unit of Equipment in like proportion as the original Purchase Price of such unit bears to the aggregate original Purchase Price of all the Equipment.

7.4. Termination Value. The Termination Value of all units subject to the Lease shall be the sum of (a) the Casualty Values thereof and accrued interest thereon, if any, plus (b) a prepayment premium equal to the product of the multiplication of such Casualty Value by the applicable percentage set forth below (the "Prepayment Premium"):

<u>Settlement Date</u>	<u>Percentage</u>
1/2/89	7%
7/2/89	6.5%
1/2/90	6.0%
7/2/90	5.5%
1/2/91	5.0%
7/2/91	4.5%
1/2/92	4.0%
7/2/92	3.5%
1/2/93	3.0%
7/2/93	2.5%
1/2/94	2.0%
7/2/94	1.5%
1/2/95	1.0%
7/2/95	.5%
1/2/96	0%



7.5. Obligations upon Payment of Casualty or Termination Value. Upon payment by the Trustee to the Vendor of the Casualty Value or Termination Value of any unit of the Equipment having suffered a Casualty Occurrence or having been subject to termination, as the case may be, absolute right to the possession of, title to and property in such unit shall pass to and vest in the Trustee, without further transfer or action on the part of the Vendor, except that the Vendor, if requested by the Trustee, will execute and deliver to the Trustee, at the expense of the Trustee, an appropriate instrument confirming such passage to the Trustee of all the Vendor's right, title and interest, and the release of the Vendor's security interest, in such unit, in recordable form, in order that the Trustee may make clear upon the public records the title of the Trustee to such unit.

#### ARTICLE 8. INSURANCE; CONDEMNATION

If the Vendor shall receive any insurance proceeds or condemnation payments in respect of any unit suffering a Casualty Occurrence, the Vendor shall forthwith pay such insurance proceeds or condemnation payments to the Trustee after receipt by the Vendor of the Casualty Value of such Unit, together with accrued interest thereon, unless an event of default shall have occurred and be continuing hereunder. All insurance proceeds received by the Vendor in respect of any unit of Equipment not suffering a Casualty Occurrence shall be forthwith paid to the Trustee upon proof reasonably satisfactory to the Vendor that any damage to such unit in respect of which such proceeds were paid has been fully repaired, provided that an event of default shall not have occurred and be continuing.

#### ARTICLE 9. REPORTS AND INSPECTIONS

On or before April 30 in each year, commencing with April 30, 1982, the Trustee shall cause to be furnished to the Vendor an accurate statement to the effect set forth in § 8 of the Lease. The Vendor shall have the right, by its agents, to inspect the Equipment and the Trustee's and the Lessee's records with respect thereto at such reasonable times as the Vendor may request during the term of this Agreement.

## ARTICLE 10. MARKING OF EQUIPMENT

The Trustee will cause each unit of Equipment to be kept numbered and marked as provided in § 5 of the Lease. The Trustee will not permit the identifying number of any unit of the Equipment to be changed except in accordance with a statement of new number or numbers to be substituted therefor which previously shall have been filed with the Vendor and filed by or on behalf of the Trustee in all public offices where this Agreement shall have been filed. Except as aforesaid, the Trustee will not allow the name of any person, association or corporation to be placed on any unit of Equipment as a designation that might be interpreted as a claim of ownership; provided, however, that the Equipment may be lettered with the names or initials or other insignia customarily used by the Lessee, its subsidiaries and affiliated companies, and provided, further, that Lessee may make any change in the lettering of the names, trademarks, initials or other insignia at any time and as often as it deems it appropriate to do so.

## ARTICLE 11. COMPLIANCE WITH LAWS

During the term of this Agreement, the Trustee will comply, and will cause every lessee or user of the Equipment to comply, in all respects (including without limitation the use, maintenance and operation of the Equipment) with all Applicable Laws (as defined in § 9 of the Lease to the extent that such laws and rules affect the title, operation or use of the Equipment) and in the event the Applicable Laws require any alteration, replacement or addition of or to any part on any unit of Equipment, the Trustee will or will cause any lessee to conform therewith at no expense to the Vendor; provided, however, that the Trustee or any lessee may, in good faith, contest the validity or application of any Applicable Law in any reasonable manner which does not, in the opinion of the Vendor, materially and adversely affect the property or rights of the Vendor under this Agreement.

## ARTICLE 12. POSSESSION AND USE

12.1. Possession and Use of Equipment by Trustee. So long as an event of default shall not have occurred and be continuing under this Agreement, the Trustee shall be entitled to the possession of the Equipment and the use thereof (as provided in the Lease) from

and after delivery of the Equipment by Trinity to the Trustee, but only upon and subject to all the terms and conditions of this Agreement.

12.2. Lease Permitted; Lease Subordinate; No Amendment or Termination. The Trustee simultaneously is leasing the Equipment to the Lessee as provided in the Lease, and the rights of the Lessee and its permitted assigns under the Lease shall be subordinated and junior in rank to the rights and shall be subject to the remedies of the Vendor under this Agreement. The Lease shall not be amended in any respect or terminated (except in accordance with its terms) without the prior written consent of the Vendor prior to the payment in full of the CSA Indebtedness, together with all other sums due to the Vendor hereunder.

#### ARTICLE 13. PROHIBITION AGAINST LIENS

13.1. Trustee To Discharge Liens. The Trustee will pay or discharge any and all sums claimed by any party from, through or under the Trustee or its successors or assigns which, if unpaid, might become a lien, charge or security interest on or with respect to the Equipment or any unit thereof or the Lease or the income and proceeds from the Equipment or the Lease and will promptly discharge any such lien, charge or security interest which arises, but shall not be required to pay or discharge any such claim so long as the validity thereof shall be contested in good faith and by appropriate legal proceedings in any reasonable manner and the nonpayment thereof does not, in the opinion of the Vendor, materially and adversely affect the security interest of the Vendor in or to the Equipment, its interest in the income and proceeds from the Equipment or otherwise under this Agreement. Any amounts paid by the Vendor in discharge of liens, charges or security interests upon the Equipment or the income and proceeds from the Equipment shall be secured by and under this Agreement.

13.2. No Breach for Certain Liens. The covenant set forth in paragraph 13.1 will not be deemed breached by reason of liens for taxes, assessments or governmental charges or levies, in each case not due and delinquent, or undetermined or inchoate materialmen's, mechanics', workmen's, repairmen's or other like liens arising in the ordinary course of business and, in each case not delinquent, liens or claims arising hereunder or under the Participation Agreement and the documents contemplated thereby or from the Vendor's acts or out of judgments under appeal and with execution thereon stayed.

13.3. Article 13 Subject to Article 22 Except in Certain Instances. The obligations of the Trustee under this Article 13 are subject to the limitations contained in Article 22 hereof; provided, however, that the Trustee will pay or discharge any and all taxes, claims, liens, charges or security interests claimed from, through or under the Trustee, its successors and assigns other than the Agent or any successor trustee under the Trust Agreement which result from claims not related to the ownership of the Equipment or the administration of the Trust Estate or any other transaction contemplated by this CSA or its Documents (as defined in the Participation Agreement), and, to the extent it receives funds sufficient for such purpose from the Owner, from, through or under the Owner and its successors and assigns (and also, to the extent that it receives funds sufficient for such purpose from the Owner, including taxes arising out of the receipt of rentals and other payments under the Lease and any other proceeds from the Equipment), which, if unpaid, might become a lien, charge or security interest on or with respect to the Equipment or the Trustee's interest in the Lease and the payments to be made thereunder, but the Trustee shall not be required to pay or discharge any such tax, claim, lien, charge or security interest so long as the validity thereof shall be contested in good faith and by appropriate legal proceedings in any reasonable manner and the nonpayment thereof does not in the reasonable opinion of the Vendor adversely affect the security interest of the Vendor in the Equipment, the Lease, its interest in the income and proceeds from the Equipment or the Lease, or otherwise under this Agreement.

#### ARTICLE 14. INDEMNITIES AND WARRANTIES

14.1. Indemnification. The Trustee shall pay and shall protect, indemnify and hold harmless the Vendor, its successors, assigns, agents and servants ("Indemnified Persons"), from and against any and all Indemnified Matters (as defined in § 9.5 of the Lease), except that the Trustee shall not be liable to Trinity in respect of any Indemnified Matter to the extent liability in respect thereof arises from an act or omission of Trinity or is covered by Trinity's warranties or patent indemnities referred to in Articles 2 and 14 hereof. The Trustee shall be obligated under this Article 14, whether or not any Indemnified Person shall also be indemnified with respect

to the same matter under any other agreement by any other person, and the Indemnified Person seeking to enforce the indemnification may proceed directly against the Trustee under this Article 14 without first resorting to any such other rights of indemnification. In case any action, suit or proceeding is brought against any Indemnified Person in connection with any Indemnified Matter, the Trustee may and, upon such Indemnified Person's request, will at the Trustee's expense resist and defend such action, suit or proceeding, or cause the same to be resisted or defended by counsel selected by the Trustee and approved by such Indemnified Person and, in the event of any failure by the Trustee to do so, the Trustee shall pay all costs and expenses (including without limitation attorneys' fees and expenses) incurred by such Indemnified Person in connection with such action, suit or proceeding. In the event the Trustee is required to make any payment under this Article 14, the Trustee shall pay such Indemnified Person an amount which, after deduction of all taxes required to be paid by such Indemnified Person in respect of the receipt thereof under the laws of the United States or of any political subdivision thereof (after giving credit for any savings in respect of any such taxes by reason of deductions, credits or allowances in respect of the payment of the expense indemnified against, and of any other such taxes as determined in the sole discretion of the Indemnified Person), shall be equal to the amount of such payment. The Vendor and the Trustee agree to give each other written notice of any claim or liability hereby indemnified against promptly upon obtaining knowledge thereof. Upon the payment in full by the Trustee of any indemnity as contained in this Article 14, and provided that no event of default described in Section 16.1 hereof or other event which with notice or lapse of time or both would constitute such an event of default shall have occurred and be continuing, the Trustee shall be subrogated to any right of such Indemnified Person (except against another Indemnified Person) in respect of such Indemnified Matter. Any payments received by such Indemnified Person from the Lessee as a result of any Indemnified Matter shall be paid over to the Trustee to the extent necessary to reimburse the Trustee for indemnification payments previously made by the Trustee in respect of such Indemnified Matter.

14.2. Survival; No Subrogation. The indemnities contained in this Article 14 shall survive the expiration

or termination of this Agreement with respect to all events, facts, conditions or other circumstances occurring or existing prior to such expiration or termination and are expressly made for the benefit of and shall be enforceable by any Indemnified Person. None of the indemnities in this Article 14 shall be deemed to create any rights of subrogation in any insurer or third party against the Trustee therefor, from or under any Indemnified Person, whether because of any claim paid or defense provided for the benefit thereof or otherwise.

14.3. Trustee Not Released if Equipment Damaged or Lost. The Trustee will bear the responsibility for and risk of any damage to or destruction or loss of each unit of Equipment and shall not be released from its obligations hereunder in any such event.

14.4. Warranties and Patent Indemnities. The agreement of the parties relating to Trinity's warranties of material and workmanship and to patent indemnification is set forth in Items 2 and 3 of Annex A hereto and Article 2 hereof. Such warranties and covenants of patent indemnity shall continue in full force and effect notwithstanding the full payment of all sums due under this Agreement, or the satisfaction, discharge or termination of this Agreement in any manner whatsoever.

14.5. Warranties of Trinity. Trinity represents and warrants to the Trustee that at the time of delivery and acceptance of each unit of Equipment under this Agreement the Trustee will have good and marketable title to such unit, free and clear of all claims, liens, security interests and other encumbrances of any nature except only the rights of the Vendor, the Lessee and the Trustee.

Trinity represents that it is not entering into this Agreement or into any other transaction contemplated by the Participation Agreement directly or indirectly in connection with any arrangement or understanding by it in any way involving any employee benefit plan (other than a governmental plan) with respect to which it or, insofar as is known to it, any party to the Participation Agreement is a party in interest, all within the meaning of the Employee Retirement Income Security Act of 1974.

Trinity hereby represents and warrants to the Trustee and its successors and assigns that this Agreement

has been duly authorized by Trinity and lawfully executed and delivered by it for a valid consideration and that, assuming due authorization, execution and delivery by the Trustee, this Agreement is, insofar as Trinity is concerned, a legal, valid and binding instrument, enforceable against Trinity in accordance with its terms.

## ARTICLE 15. ASSIGNMENTS

15.1. Assignment by Trustee. The Trustee will not transfer the right to possession of any unit of the Equipment (except pursuant to the Lease) or sell, assign, transfer or otherwise dispose of its rights under this Agreement (except as provided in the Trust Agreement).

15.2. Assignment by Vendor. All or any of the rights, remedies, benefits and advantages of the Vendor under this Agreement, including the right to receive the payments herein provided to be made by the Trustee, may be assigned by the Vendor and reassigned by any assignee at any time or from time to time. No such assignment shall subject any assignee to or relieve Trinity from any of the obligations of Trinity to deliver the Equipment to the Trustee in accordance herewith or to respond to its warranties and indemnities referred to in Articles 2 and 14 hereof, or relieve the Trustee of its obligations to Trinity contained in Articles 3, 4, 6 and 14 hereof, Annex A hereto and this Article 15 or any other obligation which, according to its terms or context, is intended to survive an assignment.

15.3. Notice of Assignment by Vendor. Upon any such assignment pursuant to Section 15.2 hereof, the assignor shall give written notice to the Trustee and the Lessee, together with a copy of such assignment, and such assignee shall, by virtue of such assignment, acquire all the assignor's right, title and interest in and to the Equipment and this Agreement, or in and to a portion thereof, as the case may be, subject only to such reservations as may be contained in such assignment. From and after the receipt by the Trustee of the notification of any such assignment, all payments thereafter to be made by the Trustee under this Agreement shall, to the extent so assigned, be made to the assignee in such manner as it may direct. The Trustee shall have no obligation to any assignee prior to actual receipt by the Trustee of written notice of any such assignment.

15.4. No Setoff Against CSA Indebtedness. The Trustee recognizes that this Agreement will be assigned to the Agent as provided in the CSA Assignment. The Trustee expressly represents, for the purpose of assurance to any person, firm or corporation considering the acquisition of this Agreement or of all or any of the rights of the Vendor hereunder, and for the purpose of inducing such acquisition, that the rights of the Agent to the entire unpaid CSA Indebtedness in respect of the Purchase Price of the Equipment or such part thereof as may be assigned together with interest thereon, as well as any other rights hereunder which may be so assigned, shall not be subject to any defense, setoff, counterclaim or recoupment whatsoever by the Trustee arising out of any breach of any obligation of Trinity with respect to the Equipment or the manufacture, construction, delivery or warranty thereof or with respect to any indemnity herein contained or arising by reason of any other indebtedness or liability at any time owing to the Trustee or the Lessee by Trinity. Any and all such obligations, howsoever arising, shall be and remain enforceable by the Trustee against and only against Trinity, as the case may be.

#### ARTICLE 16. DEFAULTS

16.1. Events of Default; Termination of Lease; Declaration of Default; Acceleration of CSA Indebtedness. In the event that any one or more of the following events of default shall occur and be continuing:

(a) the Trustee shall fail to pay or cause to be paid in full any sum payable by the Trustee when payment thereof shall be due hereunder (irrespective of the provisions of Article 4 or 22 hereof or any other provision of this Agreement limiting the liability of the Trustee) and such default shall continue for 15 days (in the case of nonpayment of interest or principal with respect to the CSA Indebtedness), or 30 days (in the case of nonpayment of any other sum payable by the Trustee hereunder) after the date such payment is due and payable; or

(b) default shall be made in the observance or performance of any other of the conditions and agreements on the part of the Trustee (irrespective of the provisions of Article 4 or 22 hereof or any



other provision of this Agreement limiting the liability of the Trustee) or the Lessee contained in the Participation Agreement, the CSA Assignment, the Lease Assignment or the Consent and such default shall continue for 30 days after the earlier of (i) written notice from the Vendor to the Trustee and the Lessee specifying the default and demanding that the same be remedied unless, at the end of such 30-day period, and thereafter for so long as the Trustee and the Lessee shall in good faith be diligently proceeding to cure such default and unless the Vendor shall determine that the resulting delay does not materially affect its rights and (ii) the date on which such default shall first become known to any trust officer of the Trustee (the term "known to any trust officer of the Trustee" shall mean actual knowledge by an officer or employee in the corporate trust department of the Trustee); or

(c) a petition for reorganization under Title 11 of the United States Code, as now constituted or as hereafter amended, shall be filed by or against the Lessee and, unless such petition shall have been dismissed, nullified, stayed or otherwise rendered ineffective (but then only so long as such stay shall continue in force or such ineffectiveness shall continue), all the obligations of the Lessee under the Lease and the Consent shall not have been and shall not continue to be duly assumed in writing within 60 days after such petition shall have been filed, pursuant to a court order or decree, by a trustee or trustees appointed (whether or not subject to ratification) in such proceedings in such manner that such obligations shall have the same status as expenses of administration and obligations incurred by such trustee or trustees; or

(d) any other proceeding shall be commenced by or against the Trustee (in its capacity as Trustee under the Trust Agreement), the Owner or the Lessee for any relief which includes or might result in any modification of the obligations of the Trustee hereunder, the Owner under the Trust Agreement or the Lessee under the Lease or under the Consent under any bankruptcy or insolvency laws or laws relating to the relief of debtors, readjustment of indebtedness,

reorganizations, arrangements, compositions or extensions (other than a law which does not permit any readjustment of such obligations), and, unless such proceedings shall have been dismissed, nullified, stayed or otherwise rendered ineffective (but then only so long as such stay shall continue in force or such ineffectiveness shall continue), all such obligations shall not have been and shall not continue to be duly assumed in writing within 60 days after such proceedings shall have been commenced, pursuant to a court order or decree, by a trustee or trustees or receiver or receivers appointed (whether or not subject to ratification) for the Trustee, the Owner or the Lessee, as the case may be, or for their respective property in connection with any such proceedings in such manner that such obligations shall have the same status as expenses of administration and obligations incurred by such trustee or trustees or receiver or receivers; or

(e) any Event of Default under and as defined in the Lease unless the Trustee shall have cured the corresponding event of default hereunder within three days after notice to the Trustee of such event of default;

then at any time after the occurrence of such an event of default the Vendor may, upon written notice to the Trustee and the Lessee, and upon compliance with any legal requirements then in force and applicable to such action by the Vendor, (i) cause the term of the Lease immediately upon such notice to terminate; provided, however, that such termination shall not be in derogation of or impair the rights of the Trustee or the Agent (under the assignment thereof), as the case may be, to enforce compliance by the Lessee with any of its covenants and agreements under the Lease or to enforce any of its rights and remedies under § 10 of the Lease (subject to the Agent's rights to repossess and sell the Equipment as provided in this Agreement), including the rights of the Trustee or the Agent (under the assignment thereof), as the case may be, to sue for and recover damages provided for in § 10 of the Lease upon the occurrence of an Event of Default under the Lease, and/or (ii) declare ("Declaration of Default") the entire unpaid CSA Indebtedness, together with the interest thereon then accrued and unpaid, immediately due and payable, without further demand, and thereafter the aggregate of the unpaid balance of such indebtedness and

interest shall bear interest from the date of such Declaration of Default at the Penalty Rate to the extent legally enforceable. Upon a Declaration of Default, subject to Article 4 hereof, the Vendor shall be entitled to recover judgment for the entire unpaid balance of the CSA Indebtedness so payable, with interest as aforesaid, and to collect such judgment out of any property of the Trustee wherever situated, subject to the provisions of Articles 4 and 22 hereof. The Trustee shall promptly notify the Vendor and the Lessee of any event of which it has knowledge which constituted, constitutes, or with the giving of notice or lapse of time or both would constitute an event of default under this Agreement.

Notwithstanding anything hereinabove to the contrary, the Vendor will not make any Declaration of Default or cause the Lease to terminate unless it shall have given not less than 15 days' prior notice to the Trustee of its intention so to do. During such period the Trustee may prepay all but not less than all of the outstanding CSA Indebtedness together with accrued interest.

16.2. Waiver of Defaults. The Vendor may, at its election, waive any such event of default and its consequences and rescind and annul any Declaration of Default or notice of termination of the Lease by notice to the Trustee and the Lessee in writing to that effect, and thereupon the respective rights of the parties shall be as they would have been if no such event of default had occurred and no Declaration of Default or notice of termination of the Lease had been made or given. Notwithstanding the provisions of this Section, time is of the essence of this Agreement and no such waiver, rescission or annulment shall extend to or affect any other or subsequent default or impair any rights or remedies consequent thereon.

## ARTICLE 17. REMEDIES

17.1. Vendor May Take Possession of Equipment. At any time during the continuance of a Declaration of Default and upon such further notice, if any, as may be required for compliance with any mandatory legal requirements then in force and applicable to the action to be taken by the Vendor, the Vendor may take or cause to be taken by its agent or agents immediate possession of the Equipment or one or more of the units thereof without

liability to return to the Trustee any sums theretofore paid and free from all claims whatsoever, except as herein-after in this Article 17 expressly provided, and may remove the same from possession and use of the Trustee, the Lessee or any other person and for such purpose may enter upon the premises where the Equipment may be located and may use and employ in connection with such removal any supplies, services and aids and any available trackage and other facilities or means of the Trustee or the Lessee, subject to all mandatory requirements of due process of law.

17.2. Assembling of Equipment for Vendor. In case the Vendor shall demand possession of the Equipment pursuant to this Agreement and shall designate a reasonable point or points from among those provided in § 11.1(a) of the Lease for the delivery of the Equipment, the Trustee shall at its own expense and risk:

(a) forthwith and in the usual manner (including without limitation giving prompt telegraphic and written notice to the Association of American Railroads and all railroads to which any unit or units have been interchanged or which may have possession thereof to return the unit or units) place such units upon such storage tracks as the Vendor reasonably may designate;

(b) cause such units to be stored on such tracks without charge for insurance, rent or storage until all such units of Equipment have been sold, leased or otherwise disposed of by the Vendor; and

(c) cause the same to be transported to any reasonable place as directed by the Vendor.

During any storage period, the Trustee will, at its own cost and expense, insure, maintain and keep each such unit in good order and repair and permit the inspection of the Equipment by the Vendor, the Vendor's representatives and prospective purchasers and users. This agreement to deliver the Equipment and furnish facilities as herein-before provided is of the essence of the agreement between the parties, and the Trustee acknowledges that upon application to any court of equity having competent jurisdiction the Vendor shall be entitled to a decree requiring specific performance hereof. The Trustee hereby expressly waives any and all claims against the Vendor and its agent or agents for damages of whatever nature in

connection with any retaking of any unit of Equipment in any commercially reasonable manner.

17.3. Vendor May Dispose of or Retain Equipment.

At any time during the continuance of a Declaration of Default, the Vendor (after retaking possession of the Equipment as provided in Section 17.1 hereof) may, at its election, retain the Equipment in satisfaction of the entire CSA Indebtedness and make such disposition thereof as the Vendor shall deem fit. Written notice of the Vendor's election to retain the Equipment shall be given to the Trustee and the Lessee by telegram or registered mail, addressed as provided in Article 21 hereof, and to any other persons to whom the law may require notice, within 30 days after such Declaration of Default. In the event that the Vendor should elect to retain the Equipment and no objection is made thereto within the 30-day period described in the second proviso below, all the Trustee's rights in the Equipment shall thereupon terminate and all payments made by the Trustee may be retained by the Vendor as compensation for the use of the Equipment; provided, however, that if the Trustee, before the expiration of the 30-day period described in the proviso below, should pay or cause to be paid to the Vendor the total unpaid balance of the CSA Indebtedness, together with interest thereon accrued and unpaid, including penalty interest, and all other payments due under this Agreement, then in such event absolute right to the possession of, title to and property in the Equipment shall pass to and vest in the Trustee; provided, further, that if the Trustee, the Lessee or any other persons notified under the terms of this Section object in writing to the Vendor within 30 days from the receipt of notice of the Vendor's election to retain the Equipment, then the Vendor may not so retain the Equipment, but shall sell, lease or otherwise dispose of it or continue to hold it pending sale, lease or other disposition as hereinafter provided or as may otherwise be permitted by law. If the Vendor shall not have given notice to retain as hereinabove provided or notice of intention to dispose of the Equipment in any other manner, it shall be deemed to have elected to sell the Equipment in accordance with the provisions of this Article 17.

17.4. Vendor May Sell Equipment; Trustee's Right of Redemption. At any time during the continuance of a Declaration of Default, the Vendor, with or without retaking possession thereof, at its election and upon

reasonable notice to the Trustee, the Lessee and any other persons to whom the law may require notice of the time and place, may sell the Equipment or one or more of the units thereof free from any and all claims of the Trustee, the Lessee or any other party claiming from, through or under the Trustee or the Lessee, at law or in equity, at public or private sale and with or without advertisement as the Vendor may determine; provided, however, that if, prior to such sale and prior to the making of a contract for such sale, the Trustee should tender full payment of the total unpaid balance of the CSA Indebtedness, together with interest thereon accrued and unpaid and all other payments due under this Agreement as well as expenses of the Vendor in retaking possession of, removing, storing, holding and preparing the Equipment for and otherwise arranging for the sale and the Vendor's reasonable attorneys' fees, then upon receipt of such payment, expenses and fees by the Vendor, absolute right to the possession of, title to and property in the Equipment shall pass to and vest in the Trustee. The proceeds of such sale or other disposition, less the reasonable attorneys' fees and any other expenses incurred by the Vendor in retaking possession of, removing, storing, holding, preparing for sale and selling or otherwise disposing of the Equipment, shall be credited on the amount due to the Vendor under the provisions of this Agreement.

17.5. Sale of Equipment by Vendor. Any sale hereunder may be held or conducted at such place or places and at such time or times as the Vendor may specify, in one lot or in separate lots and without the necessity of gathering at the place of sale the property to be sold, and in general in such manner as the Vendor may determine, so long as such sale shall be in a commercially reasonable manner. The Vendor, the Trustee or the Lessee may bid for and become the purchaser of the Equipment or any unit thereof so offered for sale. The Trustee and the Lessee shall be given written notice of such sale not less than 10 days prior thereto, by telegram or registered mail addressed as provided in Article 21 hereof. In addition, if such sale shall be a private sale (which shall be deemed to mean only a sale where an advertisement for bids has not been published in a newspaper of general circulation or a sale where less than 40 offerees have been solicited in writing to submit bids), it shall be subject to the rights of the Lessee and the Trustee to purchase or provide a purchaser, within 10 days after notice of the proposed sale price, at the same price offered by the intending purchaser

or a better price. In the event that the Vendor shall be the purchaser of the Equipment, it shall not be accountable to the Trustee or the Lessee (except to the extent of surplus money received as provided in Section 17.7 hereof) and in payment of the purchase price therefor the Vendor shall be entitled to have credited on account thereof all or any part of sums due to the Vendor hereunder.

17.6. Effect of Remedies and Powers and Exercise Thereof. Each and every power and remedy hereby specifically given to the Vendor shall be in addition to every other power and remedy hereby specifically given or now or hereafter existing at law or in equity not inconsistent herewith, and each and every power and remedy may be exercised from time to time and simultaneously and as often and in such order as may be deemed expedient by the Vendor. All such powers and remedies shall be cumulative and the exercise of one shall not be deemed a waiver of the right to exercise any other or others. No delay or omission of the Vendor in the exercise of any such power or remedy and no renewal or extension of any payments due hereunder shall impair any such power or remedy or shall be construed to be a waiver of any default or an acquiescence therein. Any extension of time for payment hereunder or other indulgence duly granted to the Trustee shall not otherwise alter or affect the Vendor's rights or the Trustee's obligations hereunder. The Vendor's acceptance of any payment after it shall have become due hereunder shall not be deemed to alter or affect the Trustee's obligations or the Vendor's rights hereunder with respect to any subsequent payments or default therein.

17.7. Deficiency or Surplus. If there shall remain any amount due to the Vendor under the provisions of this Agreement after applying all sums of money realized by the Vendor under the remedies herein provided, the Trustee shall, subject to the limitations of Section 4.8 hereof and of Article 22 hereof, pay the amount of such deficiency to the Vendor upon demand, together with interest thereon from the date of such demand to the date of payment at the Penalty Rate and, if the Trustee shall fail to pay such deficiency, the Vendor may bring suit therefor and shall be entitled to recover a judgment therefor against the Trustee, provided that the satisfaction of any such judgment shall be limited to the Trust Estate. If there shall remain a surplus in the possession of the Vendor after applying as aforesaid all sums realized

by the Vendor, such surplus shall be paid forthwith to the Trustee.

17.8. Expenses. Subject to the limitations of Section 4.8 and Article 22 hereof, the Trustee will pay all reasonable fees, costs and expenses, including attorneys' fees, incurred by the Vendor in enforcing its remedies under the terms of this Agreement. In the event that the Vendor shall bring any suit to enforce any of its rights hereunder and shall be entitled to judgment, then in such suit the Vendor may recover reasonable expenses, including reasonable attorneys' fees, and the amount thereof shall be included in such judgment.

17.9. Remedies Subject to Mandatory Legal Requirements. The foregoing provisions of this Article 17 are subject in all respects to all mandatory legal requirements at the time in force and applicable thereto.

#### ARTICLE 18. APPLICABLE STATE LAWS

18.1. Conflict with State Laws. Any provision of this Agreement prohibited by any applicable law of any jurisdiction (which is not overridden by applicable Federal law) shall be ineffective as to such jurisdiction without modifying the remaining provisions of this Agreement. Where, however, the conflicting provisions of any such applicable law may be waived, they are hereby waived by the Trustee to the full extent permitted by law, it being the intention of the parties hereto that this Agreement shall be deemed to be a conditional sale and enforced as such.

18.2. Waiver of Notices. Except as otherwise provided in this Agreement, the Trustee, to the full extent permitted by law, hereby waives all statutory or other legal requirements for any notice of any kind, including notice of intention to take possession of or to sell or lease the Equipment or any one or more units thereof, and any other requirements as to the time, place and terms of the sale or lease thereof, any other requirements with respect to the enforcement of the Vendor's rights and any and all rights of redemption.

#### ARTICLE 19. FILING

The Trustee will cause this Agreement, any assign-



ments hereof and any amendments or supplements hereto or thereto to be filed with the Interstate Commerce Commission pursuant to 49 U.S.C. § 11303 and in all other places required by §14 of the Lease; and the Trustee will from time to time perform any other act and will execute, acknowledge, deliver and file any and all further instruments required by law or reasonably requested by the Vendor for the purpose of proper protection, to the satisfaction of counsel for the Vendor, of its interest in the Equipment and its rights under this Agreement or for the purpose of carrying out the intention of this Agreement; and the Trustee will promptly furnish to the Vendor certificates or other evidence of such filing satisfactory to the Vendor.

#### ARTICLE 20. HEADINGS; MODIFICATION OF AGREEMENT

All article and section headings are inserted for convenience only and shall not affect any construction or interpretation of this Agreement.

Except for the Participation Agreement and the Exhibits thereto, this Agreement, including the Annexes hereto, exclusively and completely states the rights of Trinity, the Vendor and the Trustee with respect to the Equipment and supersedes all other agreements, oral or written, with respect to the Equipment. No variation or modification of this Agreement and no waiver of any of its provisions or conditions shall be valid unless in writing and signed by duly authorized representatives of the Vendor and the Trustee. Any reference herein to this Agreement or any other agreement shall mean such agreement and all amendments and supplements hereto or thereto then in effect.

#### ARTICLE 21. NOTICES

Any notice hereunder to any of the parties designated below shall be deemed to be properly served if delivered, telexed or mailed to it by first class mail, postage prepaid, at its chief place of business at the following specified address:

(a) to Trinity, at P. O. Box 10587, Dallas, Texas 75207;

(b) to the Trustee, at 130 South La Salle Street, Chicago, Illinois 60603, Attention of Corporate Trust Department, with copies to the Owner at its address set forth in Article 13 of the Participation Agreement;

(c) to the Lessee, at P. O. Box 1219R, Columbia Road and Park Avenue, Morristown, New Jersey 07960, Attention of Assistant Treasurer;

(d) to the Agent, at 135 South La Salle Street, Chicago, Illinois 60690, Attention of Corporate Trust Division;

(e) to any assignee of the Vendor or of the Trustee, at such address as may have been furnished in writing to the Trustee, or the Vendor, as the case may be, by such assignee;

or at such other address as may have been furnished in writing by such party to the other parties to this Agreement.

## ARTICLE 22. IMMUNITIES; SATISFACTION OF UNDERTAKINGS

22.1. No Recourse Against Certain Persons. No recourse shall be had in respect of any contractual obligation due under this Agreement or referred to herein against any incorporator, stockholder, director or officer, as such, past, present or future, of the parties hereto or of the Owner, whether by virtue of any constitutional provision, statute or rule of law or by enforcement of any assessment or penalty or otherwise; all such liability, whether at common law, in equity, by any constitutional provision, statute or otherwise, of such incorporators, stockholders, directors or officers, as such, being forever released as a condition of and as consideration for the execution of this Agreement.

22.2. Satisfaction of Certain Covenants. The obligations of the Trustee under Sections 7.1, 17.2, 17.7 and 17.8 and under Articles 6, 9, 10, 11, 13 (except as set forth in Section 13.3 thereof), 14 and 19 hereof and any and all obligations at any time arising thereunder shall be deemed satisfied in full in all respects by the Lessee's execution and delivery of the Lease. The Trustee

shall not have any responsibility for the Lessee's failure to perform such obligations; but if the same shall not be performed, they shall constitute the basis for an event of default hereunder pursuant to Article 16 hereof. No waiver or amendment of the Lessee's undertakings under the Lease shall be effective unless joined in by the Vendor; provided, however, that the Vendor shall consent to any agreement in writing between the Lessee and the Trustee increasing the rentals or casualty values payable pursuant to § 3 or § 7 of the Lease, such consent to be given by the Vendor within 30 days of delivery of a copy of such agreement to the Vendor.

22.3. No Personal Liability of Trustee. It is expressly understood and agreed by the parties hereto, anything herein to the contrary notwithstanding, that each and all of the representations, warranties, covenants, undertakings and agreements herein made on the part of the financial institution acting as Trustee hereunder are made and intended not as personal representations, warranties, covenants, undertakings and agreements by said institution or for the purpose or with the intention of binding said institution personally but are made and intended for the purpose of binding only the Trust Estate (as such term is used in the Trust Agreement) and this Agreement is executed and delivered by said institution solely in the exercise of the powers expressly conferred upon said institution as trustee under the Trust Agreement; and no personal liability or personal responsibility is assumed by or shall at any time be asserted or enforceable against said institution or the Owner (except as provided in Section 13.3 hereof) on account of this CSA or on account of any representation, warranty, covenant, undertaking or agreement herein of the Trustee (except as aforesaid or in the case of gross negligence or wilful misconduct of the Trustee), either expressed or implied, all such personal liability, if any, being expressly waived and released by the Vendor and by all persons claiming by, through or under the Vendor; provided, however, that the Vendor or any person claiming by, through or under the Vendor making claim hereunder may look to said Trust Estate for satisfaction of the same. Nothing contained in this Section 22.3 shall limit, restrict or impair the rights of the Vendor to take all actions to enforce the rights and remedies provided for herein and to bring suit and obtain a judgment against the Trustee (provided that the Trustee either in its fiduciary or individual capacity shall have no personal liability on

any such judgment and the satisfaction thereof shall be limited to the Trust Estate) or to foreclose the lien and security interest created by this Agreement or otherwise realize upon the Trust Estate, including the right to proceed against the Equipment or the Lessee under the Lease.

22.4. No Amendment to Trust Agreement. The Trustee agrees not to enter into any supplement or amendment of the Trust Agreement except as provided in Section 8.01 thereof as in effect on the date of execution and delivery hereof.

#### ARTICLE 23. GOVERNING LAW

This Agreement shall be governed by and construed in accordance with the laws of the State of Illinois; provided, however, that the parties shall be entitled to all rights conferred by 49 U.S.C. § 11303, such additional rights, if any, arising out of the filing hereof and of any assignment hereof as shall be conferred by the laws of the several jurisdictions in which this Agreement or any assignment hereof may be filed or in which any unit of Equipment shall be located and such rights, if any, arising out of the marking of Equipment.

#### ARTICLE 24. EXECUTION

This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original and all of which together shall constitute a single instrument. Although for convenience this Agreement is dated as of the date first above written, the actual dates of execution hereof by the parties hereto are the dates stated in the acknowledgments hereto annexed.

IN WITNESS WHEREOF, the parties hereto have caused this instrument to be executed by duly authorized officers as of the date first above written.

TRINITY INDUSTRIES, INC.,

[Corporate Seal]

by

E. B. Breeding  
Senior V.P.

Attest:

J. H. Hardin

EXCHANGE NATIONAL BANK OF CHICAGO,  
not in its individual capacity but  
solely as trustee under a Trust  
Agreement dated as of March 15,  
1981, with Republic National Leas-  
ing Corporation,

[Seal]

by

---

Authorized Officer

Attest:

---

Authorized Officer

STATE OF TEXAS, )  
 ) ss.:  
COUNTY OF DALLAS,)

On this 26 day of March 1981, before me personally appeared E. Breeding to me personally known, who, being by me duly sworn, says that he is Senior J.P. of TRINITY INDUSTRIES, INC., a Texas corporation, that one of the seals affixed to the foregoing instrument is the corporate seal of said Corporation, that said instrument was signed and sealed on behalf of said Corporation by authority of its Board of Directors and he acknowledged that the execution of the foregoing instrument was the free act and deed of said Corporation.

Hellen Sellers  
Notary Public

[Notarial Seal]

My Commission expires 8-16-1983

STATE OF ILLINOIS, )  
 ) ss.:  
COUNTY OF COOK, )

On this        day of March 1981, before me personally appeared to me personally known, who, being by me duly sworn, says that he is an Authorized Officer of EXCHANGE NATIONAL BANK OF CHICAGO, a national banking association, that one of the seals affixed to the foregoing instrument is the seal of said national banking association, that said instrument was signed and sealed on behalf of said national banking association by authority of its Board of Directors and he acknowledged that the execution of the foregoing instrument was the free act and deed of said national banking association.

\_\_\_\_\_  
Notary Public

[Notarial Seal]

My Commission expires

# SCHEDULE I

ALLOCATION SCHEDULE OF EACH \$1,000,000 OF CSA INDEBTEDNESS PAYABLE IN (i) ONE PAYMENT OF INTEREST ONLY ON JULY 2, 1981, (ii) ONE PAYMENT OF INTEREST ONLY ON THE INTERIM INVESTOR'S INTEREST ON SEPTEMBER 15, 1981, AND (iii) 29 SEMIANNUAL INSTALLMENTS OF PRINCIPAL AND INTEREST

<u>Installment No.</u>	<u>Total Payment</u>	<u>Interest Payment</u>	<u>Principal Recovery</u>	<u>Remaining Ending Principal</u>
7/2/81	*	*	-0-	\$1,000,000.00
9/15/81	**	**	-0-	1,000,000.00
1/2/82	84,439.88	70,000.00	14,439.88	985,560.12
7/2/82	84,439.88	68,989.21	15,450.67	970,109.45
1/2/83	84,439.88	67,907.66	16,532.22	953,577.23
7/2/83	84,439.88	66,750.41	17,689.47	935,887.76
1/2/84	84,439.88	65,512.14	18,927.74	916,960.02
7/2/84	84,439.88	64,187.20	20,252.68	896,707.34
1/2/85	84,439.88	62,769.51	21,670.37	875,036.97
7/2/85	84,439.88	61,252.59	23,187.29	851,849.68
1/2/86	84,439.88	59,629.48	24,810.40	827,039.28
7/2/86	84,439.88	57,892.75	26,547.13	800,492.15
1/2/87	84,439.88	56,034.45	28,405.43	772,086.72
7/2/87	84,439.88	54,046.07	30,393.81	741,692.91
1/2/88	84,439.88	51,918.50	32,521.38	709,171.52
7/2/88	84,439.88	49,642.01	34,797.87	674,373.66
1/2/89	84,439.88	47,206.16	37,233.72	637,139.94
7/2/89	81,599.70	44,599.80	36,999.90	600,140.04
1/2/90	81,586.02	42,009.80	39,576.22	560,563.82
7/2/90	64,313.46	39,239.47	25,073.99	535,489.83
1/2/91	64,216.58	37,484.29	26,732.29	508,757.54
7/2/91	62,410.92	35,613.03	26,797.89	481,959.65
1/2/92	62,305.02	33,737.18	28,567.84	453,391.81
7/2/92	60,631.94	31,737.43	28,894.51	424,497.30
1/2/93	60,517.50	29,714.81	30,802.69	393,694.61
7/2/93	75,033.06	27,558.62	47,474.44	346,220.17
1/2/94	84,439.88	24,235.41	60,204.47	286,015.70
7/2/94	84,439.88	20,021.10	64,418.78	221,596.92
1/2/95	84,439.88	15,511.78	68,928.10	152,668.82
7/2/95	84,439.88	10,686.82	73,753.06	78,915.76
1/2/96	84,439.86	5,524.10	78,915.76	.00
	<u>\$2,301,411.78</u>	<u>\$1,301,411.78</u>	<u>\$1,000,000.00</u>	

\* Interest only on the CSA Indebtedness accrued to this date shall be payable pursuant to Article 4 hereof.

\*\* Interest only on the Interim Investor's Interest accrued to this date shall be payable pursuant to Article 4 hereof.

ANNEX A  
TO  
CONDITIONAL SALE AGREEMENT

Information Relating to Building of Equipment

- Item 1: The Equipment shall be settled for in not more than three groups of units of Equipment delivered to and accepted by the Trustee unless a greater number shall be agreed to by the parties hereto.
- Item 2: Trinity's Warranty. Trinity warrants to the Trustee for a period of one year from the date of shipment f.o.b. plant of manufacture or 25,000 miles of service, whichever occurs first, that the units of the Equipment are free of defects in material and workmanship.

TRINITY SHALL NOT BE RESPONSIBLE FOR ANY CONSEQUENTIAL DAMAGES OR ANY FURTHER LOSS BY REASON OF ANY DEFECT.

This warranty does not cover or apply to any product, accessory, part or attachment which is not manufactured by Trinity.

If the Trustee believes any part of the Equipment to be defective in material or workmanship, the Trustee must give written notice thereof to Trinity at its address specified in this Agreement prior to the expiration of the initial warranty period, specifying details as to date and place of purchase, car number, and alleged defect. Trinity will then give written instructions to the Trustee as to how any defect is to be repaired or replaced. Subject to compliance by the Trustee with the foregoing requirements and provided that Trinity determines the alleged defect to be the result of faulty material or workmanship, Trinity, without charge, will repair any defect in material or workmanship within 120 days after



the defective part or Equipment is received by Trinity at the factory from which it was shipped or at such other location specified in writing by Trinity.

THE ABOVE EXPRESS WARRANTY IS IN LIEU OF ALL OTHER WARRANTIES (EXCEPT AS TO TITLE) AND ALL WARRANTIES, EXPRESS OR IMPLIED (EXCEPT AS TO TITLE), ARE LIMITED TO ONE YEAR IN DURATION AS SPECIFICALLY PROVIDED ABOVE.

- Item 3: Trinity's Patent Indemnity. Trinity shall defend any suit or proceedings brought against the Trustee or the Lessee based on a claim that the Equipment or any part thereof furnished hereunder constitutes an infringement of any United States patent, if notified promptly in writing and given authority, information and assistance (at the expense of Trinity) for the defense of same, and Trinity shall pay all damages and costs awarded therein against the Trustee or the Lessee. In case the Equipment or any part thereof is in such suit held to constitute infringement and the use of said Equipment or parts is enjoined, Trinity shall, at its own expense, and at its option, either procure for the Trustee and the Lessee the right to continue using said Equipment or parts, or replace same with noninfringing equipment or modify it so it becomes noninfringing, or refund the purchase price. The foregoing states the entire liability of Trinity for patent infringement by the Equipment or any part thereof.
- Item 4: The Maximum Purchase Price referred to in Article 4 of the Conditional Sale Agreement to which this Annex A is attached is \$8,734,491.

ANNEX B  
TO  
CONDITIONAL SALE AGREEMENT

Units of Railroad Equipment

<u>Type</u>	<u>AAR Mechanical Designation</u>	<u>Plant</u>	<u>Quantity</u>	<u>Lessee's Identification Numbers</u>		<u>Unit Base Price</u>	<u>Total Base Price</u>	<u>Estimated Time and Place of Delivery</u>
				<u>(Both Inclusive)</u>				
13,500 gallon coiled insulated tank cars	111A 100 W 3	Longview, Texas	145	AFPX 413213- 413357		\$56,250	\$8,156,250	March-June 1981, F.O.B. at Builder's Plant

LEASE OF RAILROAD EQUIPMENT

Dated as of March 15, 1981

Between

ALLIED CHEMICAL CORPORATION,  
Lessee,

and

EXCHANGE NATIONAL BANK OF CHICAGO,  
not in its individual capacity, but solely as trustee under  
a Trust Agreement dated as of the date hereof with  
Republic National Leasing Corporation

[covering 145 tank cars]

---

The rights and interests of the Lessor under this Lease  
are subject to a security interest in favor of LA SALLE  
NATIONAL BANK, as Agent for certain institutional inves-  
tors. The original of this Lease is held by said Agent.

LEASE OF RAILROAD EQUIPMENT dated as of March 15, 1981, between ALLIED CHEMICAL CORPORATION, a New York corporation ("Lessee"), and EXCHANGE NATIONAL BANK OF CHICAGO, a national banking association, acting not in its individual capacity but solely as trustee (together with its successors and assigns, "Owner-Trustee") under a Trust Agreement dated as of the date hereof ("Trust Agreement") with Republic National Leasing Corporation ("Owner").

The Owner-Trustee is entering into a Conditional Sale Agreement dated as of the date hereof ("CSA") with Trinity Industries, Inc., a Texas corporation ("Trinity"), wherein Trinity has agreed to sell and deliver to the Owner-Trustee the units of railroad equipment described in Schedule A hereto ("Equipment").

Trinity is assigning its interests in the CSA to La Salle National Bank, acting as agent for certain investors (said bank, as so acting, together with its successors and assigns, "Vendor") under a Participation Agreement dated as of the date hereof ("Participation Agreement") with the Lessee, the Owner-Trustee, the Owner, Old Stone Bank ("Interim Investor") and the parties named in Schedule A thereto (together with the Interim Investor, the "Investors").

The Lessee desires to lease such number of units of the Equipment as are delivered and accepted and settled for under the CSA ("Units") at the rentals and for the terms and upon the conditions hereinafter provided.

The Owner-Trustee will assign this Lease for security to the Vendor pursuant to an Assignment of Lease and Agreement ("Lease Assignment") dated as of the date hereof, and the Lessee will consent to the Lease Assignment pursuant to a Lessee's Consent and Agreement ("Consent") dated as of the date hereof.

NOW, THEREFORE, in consideration of the rentals to be paid and the covenants hereinafter mentioned to be kept and performed by the Lessee, the Owner-Trustee hereby leases the Units to the Lessee upon the following terms

and conditions:

#### § 1. NET LEASE

This Lease is a net lease. The Lessee's obligation to pay all rentals and other amounts hereunder shall be absolute and unconditional and, except as herein provided, the Lessee shall not be entitled to any abatement of rent or of other amounts due hereunder, reduction thereof or setoff against rent or such other amounts, including, but not limited to, abatements, reductions or setoffs due or alleged to be due by reason of any past, present or future claims of the Lessee against the Owner-Trustee or the Owner under this Lease or under the CSA, including the Lessee's rights by subrogation thereunder against Trinity or the Vendor or otherwise; nor, except as otherwise expressly provided herein, shall this Lease terminate, or the respective obligations of the Owner-Trustee or the Lessee be otherwise affected, by reason of any defect in or damage to or loss of possession or loss of use or destruction of all or any of the Units of Equipment from whatsoever cause, any liens, encumbrances or rights of others with respect to any of the Units, the prohibition of or other restriction against the Lessee's use of all or any of the Units, the interference with such use by any person or entity, the invalidity or unenforceability or lack of due authorization or approval of this Lease, any present or future insolvency of or the bankruptcy, reorganization or similar proceeding against the Lessee, or for any other cause whether similar or dissimilar to the foregoing, any present or future law to the contrary notwithstanding, it being the intention of the parties hereto that the rents and other amounts payable by the Lessee hereunder shall continue to be payable in all events in the manner and at the times herein provided unless the obligation to pay the same shall be terminated pursuant to the express provisions of this Lease. To the extent permitted by applicable law, the Lessee hereby waives any and all rights which it may now have or which at any time hereafter may be conferred upon it, by statute or otherwise, to terminate, cancel, quit or surrender the lease of any of the Units except in accordance with the express terms hereof. Each rental or other payment made by the Lessee hereunder shall be final, and the Lessee shall not seek to recover all or any part of such payment from the Owner-Trustee, the Owner or the Vendor for any reason whatsoever.

## § 2. DELIVERY AND ACCEPTANCE OF UNITS

The Owner-Trustee hereby appoints the Lessee its agent for inspection and acceptance of the Units pursuant to Article 3 of the CSA. Each delivery of a Unit to the Owner-Trustee under the CSA shall be deemed to be a delivery hereunder to the Lessee at the point or points within the United States of America at which such Unit is delivered to the Owner-Trustee under the CSA. Upon such delivery, the Lessee will cause an employee or agent of the Lessee to inspect the same, and if such Unit is found to be acceptable, to accept delivery of such Unit on behalf of the Owner-Trustee under the CSA and itself hereunder and execute and deliver to the Owner-Trustee a certificate of acceptance ("Certificate of Acceptance") in accordance with the provisions of Article 3 of the CSA, stating that such Unit has been inspected and accepted on behalf of the Lessee and the Owner-Trustee on the date of such Certificate of Acceptance and is marked in accordance with § 5 hereof, whereupon such Unit shall be deemed to have been delivered to and accepted by the Lessee and shall be subject thereafter to all the terms and conditions of this Lease. The Lessee hereby represents and warrants to the Owner-Trustee that no Unit shall be put into service by the Lessee or any person under the control of or with the consent of the Lessee earlier than the date of delivery to and acceptance by the Lessee as agent for the Owner-Trustee hereunder. The delivery, inspection and acceptance hereunder of any unit of Equipment excluded from the CSA pursuant to the first paragraph of Article 4 thereof shall be null and void and ineffective to subject such Unit to this Lease.

## § 3. RENTALS

3.1. Amount and Date of Payment. The Lessee agrees to pay to the Owner-Trustee, as rental for each Unit subject to this Lease, an interim rental payment on July 2, 1981 (the "Lease Commencement Date"), and thereafter 29 consecutive semiannual payments, payable in arrears on January 2 and July 2 each year, commencing January 2, 1982. The interim rental payment shall be in an amount equal to the product of the Purchase Price (as defined in the CSA) of each Unit then subject to this Lease, multiplied by 0.0262578 for

each day elapsed from and including the Closing Date on which settlement shall have been made for such Unit under the CSA to the Lease Commencement Date. The 29 semiannual rental payments due after the interim rental payment shall each be in an amount equal to 5.78058% of the Purchase Price of each Unit subject to this Lease on the date of such payment. As additional rent, the Lessee will pay (i) the amounts, if any, to be paid by the Owner-Trustee pursuant to subparagraphs (a) and (b) of the last paragraph of Section 9.1 of the Participation Agreement on the dates specified therein, (ii) any Investment Deficiency paid pursuant to Section 2.5 thereof on the dates specified therein and (iii) on January 2, 1982, the amount, if any, which constitutes the difference between interest calculated at 14% per annum for the period July 2, 1981, to September 15, 1981, on the Interim Investor's Interest (as defined in the CSA) repaid on September 15, 1981, and the interest paid to the Interim Investor on September 15, 1981. Also, as additional rent, the Lessee will pay any additional amounts necessary to satisfy obligations of the Owner-Trustee under the CSA with respect to CSA Indebtedness and interest thereon.

3.2. Payment on Nonbusiness Day. If any of the semiannual rental payment dates referred to above is not a business day (as such term is defined in the CSA) the semiannual rental payment otherwise payable on such date shall then be payable on the next succeeding business day, and no interest shall be payable for the period from and after the nominal date for payment thereof to such next succeeding business day.

3.3. Instructions To Pay Agent and Owner-Trustee. Until the Vendor notifies the Lessee that the CSA is no longer in effect, the Owner-Trustee irrevocably instructs the Lessee to make all the payments due the Owner-Trustee provided for in this Lease (other than payments to the Owner-Trustee in its individual capacity) to the Vendor, for the account of the Owner-Trustee, in care of the Vendor. The Owner-Trustee has instructed the Vendor (a) first to apply such payments to satisfy the obligations of the Owner-Trustee under the CSA known to the Vendor to be due and payable on the date such payments are due and payable hereunder and (b) second, so long as no event of default under the CSA shall have occurred and be continuing, to pay any balance promptly to the Owner-Trustee or to the order of the Owner-Trustee in immediately

available funds at such place as the Owner-Trustee shall specify in writing. The Lessee shall have no responsibility with respect to the application by the Vendor of payments made by it in accordance with the first sentence of this paragraph.

3.4. Payment in Immediately Available Funds.

The Lessee agrees to make each payment provided for in § 3.1 hereof in immediately available funds at or prior to 11:00 a.m., Chicago, Illinois, time, at the office of the Vendor on the date due, or, if the CSA shall no longer be in effect, at the office of the Owner-Trustee.

§ 4. TERM OF LEASE

4.1. Beginning and Termination; Survival. The term of this Lease as to each Unit shall begin on the date of delivery and acceptance of such Unit hereunder and, subject to the provisions of §§ 7 and 10 hereof, shall terminate on the date on which the final payment of rent in respect thereof is due pursuant to § 3 hereof. The obligations of the Lessee hereunder (including, but not limited to §§ 3, 6, 7, 9, 13 and 15 hereof) shall survive the expiration of the term of this Lease.

4.2. Rights and Obligations of Lessee Subject to CSA. Notwithstanding anything to the contrary contained herein, all rights and obligations of the Lessee under this Lease and in and to the Units are subject to the rights and obligations of the Vendor under the CSA. If an event of default should occur under the CSA, the Vendor may terminate this Lease (or rescind its termination) without affecting the indemnities which by the provisions of this Lease survive the termination of its term; provided, however, that so long as (i) no Event of Default exists hereunder, (ii) the Lessee is complying with the provisions of the Consent and (iii) the Vendor is entitled to apply the Payments (as defined in the Lease Assignment) in accordance with the Lease Assignment, this Lease may not be terminated and the Lessee shall be entitled to the rights of possession, use and assignment under § 12A hereof.

§ 5. IDENTIFICATION MARKS

The Lessee will cause each Unit to be kept numbered with the identifying number set forth in Schedule A hereto,



or in the case of any Unit not there listed such identifying number as shall be set forth in any amendment or supplement hereto extending this Lease to cover such Unit, and will keep and maintain, plainly, distinctly, permanently and conspicuously marked on each side in letters not less than one inch in height, the words, "OWNERSHIP SUBJECT TO A SECURITY AGREEMENT FILED UNDER THE INTERSTATE COMMERCE ACT, AS AMENDED", or other appropriate words designated by the Vendor or the Owner-Trustee, with appropriate changes thereof and additions thereto as from time to time may be designated by the Owner-Trustee or the Vendor as required by law or reasonably requested in order to protect the Owner-Trustee's and the Vendor's title to and interest in such Unit and the rights of the Owner-Trustee under this Lease and of the Vendor under the CSA. The Lessee will not place or permit any such Unit to be placed in operation or exercise any control or dominion over the same until such words shall have been so marked on both sides thereof and will replace or cause to be replaced promptly any such name and words which may be removed, defaced, obliterated or destroyed. The Lessee will not change or permit to be changed the identifying number of any Unit unless and until (i) a statement of new number or numbers to be substituted therefor shall have been filed with the Vendor and the Owner-Trustee and filed, recorded and deposited by the Lessee in all public offices where this Lease and the CSA shall have been filed, recorded and deposited and (ii) the Lessee shall have furnished the Vendor and the Owner-Trustee an opinion of counsel to the effect that such statement has been so filed, recorded and deposited, such filing, recordation and deposit will protect the Vendor's and the Owner-Trustee's interests in such Units and no filing, recording, deposit or giving of notice with or to any other Federal, state or local government or agency thereof is necessary to protect the interests of the Vendor and the Owner-Trustee in such Units.

Except as above provided, the Lessee will not allow the name of any person, association or corporation to be placed on any Unit as a designation that might be interpreted as a claim of ownership; provided, however, that the Lessee may permit the Equipment to be lettered with the names, trademarks, initials or other insignias customarily used by the Lessee or any of its affiliates on railroad equipment used by it of the same or a similar type for convenience of identification of its rights to use the Equipment under this Lease, and the Equipment may be lettered in an appropriate manner for convenience of identification of the interest of the Lessee therein.

The Lessee may make any change in the lettering of

the names, trademarks, initials or other insignias at any time and as often as it deems it appropriate to do so. At the expiration of the Lease or any extension hereof, the Owner-Trustee will promptly remove, at the Lessee's sole expense, the Lessee's names, trademarks, initials or other insignias and will not allow the Units to be used or operated without first removing same.

## § 6. TAXES

Whether or not any of the transactions contemplated hereby are consummated, the Lessee agrees to pay, and to indemnify and hold the Owner-Trustee, the Owner, the Investors and the estate held in trust by the Owner-Trustee under the Trust Agreement harmless from all taxes (income, gross receipts, franchise, sales, use, property [real or personal, tangible or intangible] and stamp taxes), assessments, fees and charges of any nature whatsoever, together with any penalties, fines, additions to tax or interest thereon, howsoever imposed, whether levied or imposed upon the Owner-Trustee, the Owner, the Vendor, the Investors, the Lessee, the trust estate created by the Trust Agreement or otherwise, by any Federal, state or local government or governmental subdivision in the United States or by any foreign country or subdivision thereof, upon or with respect to: any Unit or any part thereof; the manufacture, purchase, ownership, delivery, leasing, possession, use, operation, transfer of title, return or other disposition thereof; the rentals, receipts or earnings arising therefrom or value added thereto; this Lease, the Lease Assignment, the Consent, the Trust Agreement, the Participation Agreement, the CSA or the CSA Assignment, any payment made pursuant to any such agreement, or the property, the income or other proceeds received with respect to property held in trust by the Owner-Trustee under the Trust Agreement (all such taxes, assessments, fees, charges, penalties, fines, additions to tax and interest imposed as aforesaid being hereinafter called "Taxes"); excluding, however: (i) Taxes of the United States or of any state or political subdivision thereof and (if and to the extent that any such tax is currently creditable against United States Federal income taxes whether or not actually allowed as a credit with respect to any person indemnified hereunder) of any foreign country or subdivision thereof, imposed on or measured solely by the net income or excess profits of the Owner-Trustee, the Owner, the Investors or the Vendor, or franchise or value added tax to the extent adopted in substitution thereof, other than Taxes arising out of or imposed in respect of the receipt of indemnification payments

pursuant to this Lease or gross receipts taxes which are in lieu of a property tax; provided that such Taxes of any foreign country or subdivision thereof incurred as a result of the indemnified party being taxed by such foreign country or jurisdiction on its worldwide income without regard to the transactions contemplated by this Lease shall be excluded whether or not the indemnified party is currently allowed a credit against its United States Federal income taxes; (ii) any Taxes imposed as a direct result of a voluntary transfer or other voluntary disposition by the Owner or any transfer or disposition by the Owner resulting from bankruptcy or other proceedings for the relief of creditors in which the Owner is the debtor, whether voluntary or involuntary, of any interest in any Unit or interest in rentals under this Lease or in the Trust Estate (as defined in the Trust Agreement) without the consent of the Lessee, unless, in each case, such transfer or disposition is required or contemplated by this Lease or an Event of Default shall have occurred and be continuing; and (iii) any Taxes imposed on or measured by any trustee fees received by the Owner-Trustee or any compensation received by the Vendor; provided, however, that the Lessee shall not be required to pay any Taxes during the period it may be contesting the same in the manner provided in the next succeeding paragraph. The Lessee further agrees to pay on or before the time or times prescribed by law any tax imposed on or measured solely by the net income of the Lessee (or the affiliated group, within the meaning of section 1504 of the Internal Revenue Code of 1954, as amended, of which the Lessee is a member) under the laws of the United States or of any state or political subdivision thereof, or of any foreign country or subdivision thereof which, if unpaid, might result in a lien or other encumbrance upon any Unit; provided, however, that the Lessee shall not be required to pay any such tax during the period it may be contesting the same. The amount which the Lessee shall be required to pay with respect to any taxes indemnified against pursuant to this § 6 shall be an amount sufficient to restore the indemnified party to the same position such indemnified party would have been in had such Taxes not been imposed.

If claim is made against any indemnified party for any Taxes indemnified against under this § 6, such party shall promptly notify the Lessee. If reasonably requested by the Lessee in writing, such indemnified party shall, upon receipt of indemnity satisfactory to it for all costs, expenses, losses, legal and accountants' fees and disbursements, penalties, fines, additions to tax and interest, and at the expense of the Lessee, contest in good

faith the validity, applicability or amount of such Taxes by (a) resisting payment thereof if possible, (b) not paying the same except under protest, if protest is necessary and proper, and (c) if payment is made, using reasonable efforts to obtain a refund thereof in appropriate administrative or judicial proceedings, or both. The Lessee may also contest, at its own expense, the validity, applicability or amount of such Taxes in the name of such indemnified party; provided that no proceeding or action relating to such contest shall be commenced (nor shall any pleading, motion, brief or other paper be submitted or filed in the name of such indemnified party in any such proceeding or action) without the prior written consent of such indemnified party, which consent shall not be unreasonably withheld. If such indemnified party shall obtain a refund of all or any part of such Taxes previously reimbursed by the Lessee in connection with any such contest or an amount representing interest thereon applicable to the amount paid by the Lessee and the period of such payment, such indemnified party shall pay to the Lessee the amount received from the Lessee in respect of such refund or interest net of expenses; provided, however, that no Event of Default and no event which, with notice or lapse of time or both, would constitute an Event of Default shall have occurred and be continuing.

If any person indemnified hereunder shall be allowed a credit for any foreign taxes for which the Lessee shall have reimbursed such indemnified party, such indemnified party shall pay to the Lessee the amount of such credit, plus an amount equal to any tax benefits realized by such indemnified party as a result of any payment to the Lessee pursuant to this sentence.

For purposes of this paragraph, in determining the order in which the indemnified party utilizes withholdings or other foreign taxes as a credit against such indemnified party's United States income taxes, such indemnified party shall be deemed to utilize tax credits in the following order: (i) all foreign taxes arising in connection with its business other than equipment lease transactions, (ii) all foreign taxes arising from lease transactions entered into prior to the transactions contemplated hereby, (iii) all foreign taxes arising from this lease transaction and (iv) all foreign taxes arising in connection with lease transactions entered into after the transactions contemplated hereby.

In case any report or return is required to be made with respect to any obligation of the Lessee under this § 6 or arising out of this § 6, except obligations resulting from the second sentence of the first paragraph of this § 6, the Lessee shall either make such report or return in such manner as will show the interests of the Owner-Trustee in the Units, or shall promptly notify the Owner-Trustee, the Owner and the Vendor of such requirement and shall make such report or return in such manner as shall be reasonably satisfactory to the Owner-Trustee, the Vendor and the Owner. All costs and expenses (including legal and accountants' fees) of preparing any such return or report shall be borne by the Lessee.

All the obligations of the Lessee under this § 6 shall survive and continue, notwithstanding the expiration of the Lease. All amounts payable by the Lessee pursuant to this § 6 shall be payable directly to the indemnified party entitled to indemnification, except to the extent paid to a governmental agency or taxing authority.

The Lessee shall furnish promptly upon request, such information and data as is normally available to the Lessee and which the Owner-Trustee, the Vendor or the Owner reasonably may require to permit compliance with the requirement of any taxing authority.

#### § 7. PAYMENT FOR CASUALTY OCCURRENCES, INSURANCE

7.1. Definition of Casualty Occurrence;  
Payments. In the event that any Unit shall be or become worn out, lost, stolen, destroyed, irreparably damaged, or permanently rendered unfit for use from any cause whatsoever, or taken or requisitioned by condemnation or otherwise resulting in loss of possession by the Lessee for a period of 90 consecutive days, except requisition for use by the United States Government ("Government") for a period not in excess of the then remaining term of this Lease (such occurrences being hereinafter called Casualty Occurrences) during the term of this Lease, or until such Unit shall have been returned in the manner provided in § 11 or 13 hereof, the Lessee shall within ten days after it

shall have reasonably determined that such Unit has suffered a Casualty Occurrence notify the Owner-Trustee and the Vendor with respect thereto specifying the date, cause and extent of such Casualty Occurrence. On the semiannual rental payment date next succeeding the delivery of such notice (or, in the event the term of this Lease has already expired or will expire within 10 days after delivery of such notice, on a date within 10 days of such delivery), the Lessee shall pay to the Owner-Trustee an amount equal to the rental payment or payments in respect of such Unit due and payable on such date plus a sum equal to the Casualty Value (as defined in the next sentence) of such Unit as of the date of such payment in accordance with the schedule referred to hereafter. The Casualty Value of each Unit as of the payment date on which payment is to be made as aforesaid shall be that percentage of the Purchase Price of such Unit as is set forth in Schedule B hereto opposite such date. Upon the making of such payment by the Lessee in respect of any Unit, the rental for such Unit shall cease to accrue as of the date of such payment, the term of this Lease as to such Unit shall terminate and (except in the case of the loss, theft or complete destruction of such Unit) the Owner-Trustee shall be entitled to recover possession of such Unit at its own expense.

If the date upon which the making of such payment by the Lessee in respect of any Unit as required as aforesaid shall be after the term of this Lease in respect of such Unit has expired, no rental for such Unit shall accrue after the end of such term but the Lessee, in addition to paying the Casualty Value for such Unit shall pay interest thereon from the end of such term to the date of such payment at the rate of 14% per annum. However, if the Casualty Occurrence occurs after the Lease Term has expired, the Lessee shall pay interest thereon at the rate of 14% per annum commencing 10 days after such Casualty Occurrence to the date of such payment.

7.2. Lessee Agent for Disposal. The Owner-Trustee hereby appoints the Lessee its agent to dispose of any Unit suffering a Casualty Occurrence or any component thereof, before or after the expiration of this Lease, at the best price obtainable by the Lessee upon exercise of reasonable efforts on an "as is, where is" basis and will pay the Lessee's reasonable expenses for such disposal. Provided that the Lessee has previously paid the Casualty Value to the Owner-Trustee and is not in default hereunder, the Lessee shall be entitled to the proceeds of such disposition to the extent they do not exceed the Casualty Value of such Unit, and shall pay any excess to the Owner-Trustee.

7.3. Requisition by United States Government.

In the event of the requisition for use by the Government of any Unit for a period which does not exceed the term of this Lease, all the obligations of the Lessee under this Lease with respect to such Unit shall continue to the same extent as if such requisition had not occurred. All payments received by the Owner-Trustee or the Lessee from the Government for the use of such Unit during the term of this Lease shall be paid over to, or retained by, the Lessee provided no Event of Default (or other event which after notice or lapse of time or both would become an Event of Default) shall have occurred and be continuing.

7.4. No Release. Except as hereinabove in this § 7 provided, the Lessee shall not be released from its obligations hereunder in the event of, and shall bear the risk of, any Casualty Occurrence to any Unit from and after delivery and acceptance thereof by the Lessee hereunder until expiration of this Lease and Lessee's obligations under §§ 11 and 13 hereof.

7.5. Insurance. The Lessee shall, at all times prior to the return of the Equipment to the Owner-Trustee, at its own expense, cause to be carried and maintained public liability insurance and property insurance in respect of the Units, naming the Owner-Trustee, the Owner and the Vendor as additional named insureds as their interests may appear, at least in amounts and against risks customarily insured against by the Lessee in respect of similar equipment owned by it; provided, however, that, subject to availability, the amount of such public liability coverage shall not, at any time, be less than \$20 million per occurrence.

The Lessee shall obtain from each insurer under the paragraph immediately above an agreement, by endorsement or separate instrument, that such insurer will give the Owner-Trustee, the Owner and the Vendor 30 days' written notice before such insurer's policy shall be materially altered or canceled or not renewed. In January of each year, the Lessee shall deliver to the Owner-Trustee, the Owner and the Vendor a certificate of insurance by or on behalf of each insurer stating the coverage, named insureds and limits of each such policy. Any policies of insurance

carried in accordance with this paragraph shall in addition waive any right to claim premiums or commissions against the Owner, the Owner-Trustee and the Vendor and, in the event such policies shall contain breach of warranty provisions, such policies shall provide that in respect of the interests of the Owner-Trustee, the Owner and the Vendor in such policies the insurance shall not be invalidated by any action or inaction of the Lessee or any other person (other than the Owner-Trustee, the Owner and the Vendor, respectively) and shall insure the Owner-Trustee, the Owner and the Vendor regardless of any breach or violation of any warranty, declaration or condition contained in such policies by the Lessee or by any other person (other than the Owner-Trustee, the Owner or the Vendor, respectively).

7.6. Insurance Proceeds and Condemnation Payments. If the Owner-Trustee shall receive (directly or from the Vendor) any insurance proceeds from a policy or policies obtained by the Lessee or condemnation payments in respect of such Units suffering a Casualty Occurrence, the Owner-Trustee shall pay forthwith such proceeds or condemnation payments to the Lessee up to an amount equal to the Casualty Value with respect to any Unit theretofore paid by the Lessee and any balance of such proceeds or condemnation payments shall remain the property of the Owner-Trustee; provided, however, that no Event of Default shall have occurred and be continuing and the Lessee shall have made payment of the Casualty Value thereof, and accrued rentals in respect of such Units, to the Owner-Trustee.

7.7. Economic Obsolescence. During the original term of this Lease, in the event that the Lessee shall, in its reasonable judgment, determine that all the Units remaining under this Lease have become economically obsolete or surplus to the Lessee's and its subsidiaries' requirements in the Lessee's and its subsidiaries' business and an officer of the Lessee shall have provided a certificate to such effect to the Owner-Trustee and the Agent, the Lessee shall have the right, at its option and on at least 120 days' prior written notice to the Owner-Trustee, to terminate (which act shall hereinafter be called the "Termination") this Lease as to not less than all such Units as of any succeeding rental payment date specified in such notice occurring more than 120 days thereafter (such termination date so specified being hereinafter called the "Termination Date"); provided, however, that



(i) the Termination Date shall not be earlier than the 14th semiannual rental payment date, (ii) no Event of Default or other event which after the lapse of time or the giving of notice or both would become an Event of Default shall have occurred and be continuing on such date and (iii) on the Termination Date all Units shall be in the condition required for redelivery pursuant to § 13 hereof.

During the period after the giving of such notice until the fifth business day preceding the Termination Date, the Lessee shall use its best efforts to obtain bids for the purchase of each such Unit, and the Lessee shall at least five business days prior to such Termination Date certify to the Owner-Trustee the amount of each such bid and the name and address of the party (which shall not be a corporation, other entity or individual affiliated with the Lessee or any party for whom the Lessee or any such affiliate intends thereafter to lease such Unit) submitting such bid. On the Termination Date the Owner-Trustee shall sell each such Unit for cash to the bidder who shall have submitted the highest bid prior to the Termination Date. The total sale price realized at each such sale shall be retained by the Owner-Trustee.

On such Termination Date, the Lessee shall pay to the Owner-Trustee with respect to each such Unit an amount equal to (i) the excess, if any, of the Termination Value (as hereinafter defined) for each such Unit computed as of such date over the sale price of any such Unit so sold after the deduction of all expenses incurred by the Owner-Trustee in connection with such sale and (ii) the rental payment with respect to each such Unit due on such Termination Date. The Termination Value of each such Unit as of the Termination Date on which payment is to be made shall be equal to that percentage of the Purchase Price of such Unit as is set forth in Schedule C hereto opposite such date. In no event shall the aggregate amount of sale proceeds retained by the Owner-Trustee and payments of rental and Termination Value received by the Owner-Trustee as aforesaid be less than the Termination Value (as defined in Section 7.4 of the CSA) with respect to such Units as of such Termination Date.

If no sale of the Units shall occur on the Termination Date with respect thereto as provided above,

this Lease shall continue in full force and effect without change.

Subject to the receipt by the Owner-Trustee on the Termination Date of the amounts above described, the obligation of the Lessee to pay rent pursuant to § 3 hereof in respect of such Unit on each rental payment date shall continue to and include the Termination Date but shall then terminate. The Owner-Trustee shall be under no duty to solicit bids, to inquire into the efforts of the Lessee to obtain bids or otherwise to take any action or incur any cost or expense in connection with any sale other than to transfer or to cause to be transferred all the Owner-Trustee's right, title and interest in and to such Unit to the purchaser named in the highest bid certified by the Lessee to the Owner-Trustee as above provided. Any such sale shall be free and clear of all the Lessee's rights to such Unit, but otherwise shall be made without warranties other than against the Owner-Trustee's acts.

If the Lessee shall exercise its option to effect a Termination, the Owner-Trustee may, notwithstanding such election by the Lessee, by written notice to the Lessee, the Agent and the Investors given within 60 days after the termination notice is given to the Owner-Trustee and upon satisfaction and discharge of the Owner-Trustee's obligations under the CSA with respect to any such Unit, elect to retain such Unit. In the event the Owner-Trustee shall so elect to retain such Unit and delivers to the Lessee evidence of the satisfaction and discharge of the Owner-Trustee's obligations under the CSA with respect to such Unit, the Lessee shall not be obligated to pay the Termination Value to the Owner-Trustee and the Lessee shall deliver such Unit to the Owner-Trustee in accordance with the provisions of § 13 hereof.

#### § 8. REPORTS

On or before April 30 in each year, commencing with April 30, 1982, the Lessee will furnish to the Owner-Trustee, the Owner and the Vendor an accurate statement (a) setting forth as at the preceding December 31 the amount, description and numbers of all Units then leased hereunder and covered by the CSA, the amount, description and numbers of all Units that have suffered a Casualty Occurrence during the preceding calendar year (specifying

the dates of such Casualty Occurrences) or to the knowledge of the Lessee are then undergoing repairs (other than running repairs) or are then withdrawn from use pending repairs (other than running repairs) and such other information regarding the condition and state of repair of the Units as the Owner-Trustee or the Vendor may reasonably request and (b) stating that, in the case of all Units repainted or repaired during the period covered by such statement, the numbers and the markings required by § 5 hereof and the CSA have been preserved or replaced. The Owner-Trustee shall, at its sole cost and expense, have the right by its agents to inspect the Units and the Lessee's records with respect thereto at such reasonable times as the Owner-Trustee may request as may be reasonably necessary to confirm to the Owner-Trustee the existence of proper maintenance of the Units during the continuance of this Lease.

§ 9. DISCLAIMER OF WARRANTIES;  
COMPLIANCE WITH LAWS AND RULES;  
MAINTENANCE; INDEMNIFICATION

9.1. Disclaimer of Warranties. NEITHER THE OWNER-TRUSTEE NOR THE OWNER MAKES, HAS MADE OR SHALL BE DEEMED TO MAKE OR HAVE MADE ANY WARRANTY OR REPRESENTATION, EITHER EXPRESS OR IMPLIED, AS TO THE DESIGN, COMPLIANCE WITH SPECIFICATIONS, OPERATION OR CONDITION OF, OR AS TO THE QUALITY OF THE MATERIAL, EQUIPMENT OR WORKMANSHIP IN, THE UNITS OR ANY COMPONENT THEREOF DELIVERED TO THE LESSEE HEREUNDER, AND NEITHER THE OWNER-TRUSTEE NOR THE OWNER MAKES ANY WARRANTY OF MERCHANTABILITY OR FITNESS OF THE UNITS OR ANY COMPONENT THEREOF FOR ANY PARTICULAR USE OR PURPOSE NOR AS TO TITLE TO THE UNITS OR ANY COMPONENT THEREOF, NOR ANY OTHER REPRESENTATION OR WARRANTY, EXPRESS OR IMPLIED, WITH RESPECT TO ANY UNIT OR ANY COMPONENT THEREOF (EITHER UPON DELIVERY THEREOF TO THE LESSEE OR OTHERWISE), it being agreed that all such risks, as between the Owner-Trustee and the Lessee, are to be borne by the Lessee; but the Owner-Trustee hereby irrevocably appoints and constitutes the Lessee its agent and attorney-in-fact during the term of this Lease to assert and enforce from time to time, in the name of and for the account of the Owner-Trustee and/or the Lessee, as their interests may appear, at the Lessee's sole cost and expense, whatever claims and rights the Owner-Trustee may have against Trinity or any other person, including, but not limited to, any claims and rights arising under the provisions of the CSA. The Owner-Trustee and the Owner shall not have any responsibility or liability to the Lessee or any other

person or entity with respect to any of the following: (i) any liability, loss or damage caused or alleged to be caused directly or indirectly by any Units or by any inadequacy thereof or deficiency or defect therein or by any other circumstance in connection therewith; (ii) the use, operation or performance of any Units or any risks relating thereto; (iii) any interruption of service, loss of business or anticipated profits or consequential damages; or (iv) the delivery, operation, servicing, maintenance, repair, improvement or replacement of any Units. The Lessee's delivery of a Certificate of Acceptance shall be conclusive evidence as between the Lessee and the Owner-Trustee that the Units described therein are in all the foregoing respects satisfactory to the Lessee, and the Lessee will not assert any claim of any nature whatsoever against the Owner or the Owner-Trustee based on any of the foregoing matters.

9.2. Compliance with Laws and Rules. The Lessee agrees, for the benefit of the Owner-Trustee, the Owner and the Vendor, to comply in all respects (including, without limitation, with respect to the use, maintenance and operation of each Unit) with all laws of the jurisdictions in which its operations involving the Units may extend, with the interchange rules of the Association of American Railroads and with all lawful rules of the United States Department of Transportation, the Interstate Commerce Commission and any other legislative, executive, administrative or judicial body exercising any power or jurisdiction over the Units ("Applicable Laws"), to the extent that such laws and rules affect the title, operation or use of the Units and in the event that such laws or rules require any alteration, replacement, modification or addition of or to any part of any Unit, the Lessee will fully conform therewith at its own expense; provided, however, that the Lessee may, in good faith, contest the validity or application of any such law or rule in any reasonable manner which does not, in the opinion of the Owner-Trustee or the Vendor, adversely affect the property or rights of the Owner-Trustee or the Vendor under this Lease or under the CSA.

9.3. Maintenance. The Lessee agrees that, at its own cost and expense, it will maintain and keep each Unit (including any parts installed on or replacements made to any Unit and considered an accession thereto as hereinbelow provided) which is subject to this Lease in

good operating order and repair, ordinary wear and tear excepted. Except for alterations or changes required by law, the Lessee shall not, without the prior written approval of the Owner-Trustee, effect any permanent structural change in the design, construction or body of the Units or appurtenances thereto which will materially change the use for which the Equipment is intended.

9.4. Additions and Accessions. The Lessee and its affiliates, at their own cost and expense, may from time to time make such alterations, modifications and additions (including, without limitation, any special devices or assemblies at any time attached or affixed to any Unit, the cost of which is not included in the Purchase Price of such Unit and which are not required for the operation or use of such Unit by the Interstate Commerce Commission, the United States Department of Transportation or any other legislative, executive, administrative or judicial body exercising any power or jurisdiction over such Unit) (hereinafter collectively called Additions) to the Units as the Lessee may deem desirable in the proper conduct of its business so long as such Additions shall not be inconsistent with the continuing operation of the Units in accordance with their original conventional purpose and shall not diminish the value, utility or condition of the Units below the value, utility and condition thereof immediately prior to the making of such Additions, assuming the Units were then in the condition required to be maintained by the terms of this Lease.

Title to all Parts (as hereinbelow defined) incorporated in or installed as part of the Units shall without further act vest in the Owner-Trustee and the Vendor as their respective interests may appear in the Unit itself in the following cases: (i) such Part is in replacement of or in substitution for, and not in addition to, any Part originally incorporated in or installed as part of a Unit at the time of the acceptance thereof hereunder or any Part in replacement of, or in substitution for, any such replaced or substituted Part, (ii) such Part is required to be incorporated in or installed as part of the Unit pursuant to the terms of § 9.2 or § 9.3 hereof, or (iii) notwithstanding the provisions of the first paragraph of this § 9.4, such Part cannot be readily removed from the Unit to which it relates without material damage thereto

and without diminishing or impairing the value or utility which such Unit shall have had at such time had such alteration or addition not occurred. In all other cases, if no Event of Default under § 10 hereof (or other event which after lapse of time or notice or both would constitute an Event of Default) shall have occurred and be continuing, title to Parts incorporated in or installed as parts of the Units as a result of such alterations or additions shall vest in the Lessee. The term Part for the purposes of this paragraph and § 13 hereof shall be defined to include any appliance, part, instrument, accessory, furnishing or other equipment of any nature which may from time to time be incorporated in or installed as part of any Unit.

9.5. Indemnification. The Lessee shall pay, and shall protect, indemnify and hold the Owner-Trustee (as trustee and in its individual capacity), the Owner and the Vendor, and their respective successors, assigns, agents and servants (hereinafter called Indemnified Persons), harmless from and against any and all causes of action, suits, penalties, claims, demands or judgments, of any nature whatsoever which may be imposed on, incurred by or asserted against any Indemnified Person (including any or all liabilities, obligations, damages, costs, disbursements, expenses [including without limitation attorneys' fees and expenses of any Indemnified Person] relating thereto) in any way relating to or arising or alleged to arise out of this Lease or any of such Indemnified Person's Documents (as defined in the Participation Agreement) or the Units, including without limitation those in any way relating to or arising or alleged to arise out of (i) the manufacture, construction, purchase, acceptance, rejection, ownership, delivery, nondelivery, lease, possession, use, operation, condition, sale, return or other disposition of any Unit or portion thereof; (ii) any latent or other defects whether or not discoverable by any Indemnified Person or the Lessee; (iii) any claim for patent, trademark or copyright infringement; (iv) any claims based on strict liability in tort; (v) any injury to or the death of any person or any damage to or loss of property on or near the Units or in any manner growing out of or concerned with, or alleged to grow out of or be connected with, the ownership, use, replacement, adaptation or maintenance of

the Units or of any other equipment in connection with the Units (whether owned or under the control of the Owner-Trustee, the Lessee or any other person) or resulting or alleged to result from the condition of any thereof; and (vi) any violation, or alleged violation, of any provision of this Lease or any Document or of any agreement, law, rule, regulation, ordinance or restriction, affecting or applicable to the Units or the leasing, ownership, use, replacement, adaptation or maintenance thereof (all of the foregoing being herein called "Indemnified Matters"). The Lessee shall not be responsible to an Indemnified Person, other than the Owner-Trustee, under this § 9.5 with respect to any claim to the extent that such claim arises from the Indemnified Person's own default or own negligence. In the case of the Owner-Trustee, the Lessee will not be responsible to the extent such claim arises from the Owner-Trustee's gross negligence or wilful misconduct. The Lessee shall be obligated under this § 9, irrespective of whether any Indemnified Person shall also be indemnified with respect to the same matter under any other agreement by any other person, and the Indemnified Person seeking to enforce the indemnification may proceed directly against the Lessee under this § 9 without first resorting to any such other rights of indemnification. In case any action, suit or proceeding is brought against any Indemnified Person in connection with any claim indemnified against hereunder, the Lessee may and, upon the request of such Indemnified Person will, at the expense of the Lessee resist and defend such action, suit or proceeding, or cause the same to be resisted or defended by counsel selected by the Lessee and approved by such Indemnified Person, as the case may be, and, in the event of any failure by the Lessee so to do, the Lessee shall pay all costs and expenses (including without limitation reasonable attorneys' fees and expenses) incurred by such Indemnified Person in connection with such action, suit or proceeding. In the event the Lessee is required to make any payment under this § 9, the Lessee shall pay such Indemnified Person an amount which, after deduction of all taxes required to be paid by such Indemnified Person in respect of the receipt thereof under the laws of the United States or of any political subdivision thereof (after giving credit for any savings in respect of any such taxes by reason of deductions, credits or allowances in respect of the payment of the expense indemnified against, and of any other such taxes as reasonably determined in the sole discretion of the Indemnified Person), shall be equal to the amount of such payment. The Lessee and the Owner-

Trustee each agrees to give each other promptly upon obtaining knowledge thereof written notice of any claim or liability hereby indemnified against. Upon the payment in full of any indemnities as contained in this § 9 by the Lessee, and provided that no Event of Default (or other event which with lapse of time or notice or both would constitute an Event of Default) shall have occurred and be continuing, it shall be subrogated to any right of such Indemnified Person in respect of the matter against which indemnity has been given. Any payments received by such Indemnified Person from any person (except the Lessee) as a result of any matter with respect to which such Indemnified Person has been indemnified by the Lessee pursuant to this § 9 shall be paid over to the Lessee to the extent necessary to reimburse the Lessee for indemnification payments previously made in respect of such matter but only after such Indemnified Person has been indemnified in full.

The Lessee further agrees to indemnify, protect and hold harmless the Vendor, the Owner and the Owner-Trustee, as third-party beneficiaries hereof, from and against any and all liability, claims, costs, charges and expenses, including royalty payments and counsel fees, in any manner imposed upon or accruing against the Vendor, the Owner or the Owner-Trustee because of the use in or about the construction or operation of any of the Equipment of any article or material specified by the Lessee, the Owner-Trustee or the Owner and not manufactured by Trinity or of any design, system, process, formula or combination specified by the Lessee, the Owner-Trustee, or the Owner and not developed or purported to be developed by Trinity which infringes or is claimed to infringe on any patent or other right.

9.6. Survival. The indemnities contained in this § 9 shall survive the expiration or termination of this Lease with respect to all events, facts, conditions or other circumstances occurring or existing prior to such expiration or termination and are expressly made for the benefit of, and shall be enforceable by, any Indemnified Person. None of the indemnities in this § 9 shall be deemed to create any rights of subrogation which do not already exist in any insurer or third party against the Lessee therefor, from or under any Indemnified Person, whether because of any claim paid or defense provided for the benefit thereof or otherwise.



9.7. Payments for Indemnification. All payments hereunder shall be made directly to the Indemnified Person.

9.8. Reports. The Lessee agrees at its expense to prepare and deliver to the Owner-Trustee within a reasonable time prior to the required date of filing (or, to the extent permissible, file on behalf of the Owner-Trustee) any and all reports (other than income tax returns) to be filed by the Owner-Trustee with any Federal, state or other regulatory authority by reason of the ownership by the Owner-Trustee or the Owner of the Units or the leasing thereof to the Lessee.

## § 10. DEFAULT

10.1. Events of Default; Remedies. If, during the continuance of this Lease, one or more of the following events (each such event being herein sometimes called an Event of Default) shall occur:

(a) payment of any part of the rental provided in § 3 hereof or payment in respect of any Casualty Occurrence pursuant to § 7 hereof shall not be made by the Lessee when such payment is due and such default shall continue for 12 days;

(b) default shall be made in the observance or performance of any other of the covenants, conditions and agreements on the part of the Lessee contained herein, in the Participation Agreement or the Consent, and such default shall continue for 30 days after written notice from the Owner-Trustee or the Vendor to the Lessee specifying the default and demanding that the same be remedied, unless, at the end of such 30-day period and thereafter for so long as, the Lessee shall in good faith be diligently proceeding to cure such default and the resulting delay does not materially prejudice the rights of the Owner-Trustee;

(c) the Lessee shall make or permit any unauthorized assignment or transfer of this Lease, or any interest herein, or of the right to possession of the Units, or any thereof;

(d) a petition for reorganization under Title 11 of the United States Code, as now constituted or as hereafter amended, shall be filed by or against the Lessee and, unless such petition shall have been dismissed, nullified, stayed or otherwise rendered ineffective (but then only so long as such stay shall continue in force or such ineffectiveness shall continue), all the obligations of the Lessee under this Lease, the Consent and the Indemnity Agreement (as defined in the Participation Agreement) shall not have been and shall not continue to be duly assumed in writing within 60 days after such petition shall have been filed, pursuant to a court order or decree, by a trustee or trustees appointed (whether or not subject to ratification) in such proceedings in such manner that such obligations shall have the same status as expenses of administration and obligations incurred by such trustee or trustees;

(e) any proceedings shall be commenced by or against the Lessee for any relief which includes, or might result in, any modification of the obligations of the Lessee under this Lease, the Participation Agreement, the Consent or the Indemnity Agreement, under any bankruptcy or insolvency laws, or laws relating to the relief of debtors, readjustments of indebtedness, reorganizations, arrangements, compositions or extensions (other than a law which does not permit any readjustments of the obligations of the Lessee hereunder) and, unless such proceedings shall have been dismissed, nullified, stayed or otherwise rendered ineffective (but then only so long as such stay shall continue in force or such ineffectiveness shall continue), all the obligations of the Lessee under this Lease, the Participation Agreement, the Consent and the Indemnity Agreement shall not have been and shall not continue to be duly assumed in writing, pursuant to a court order or decree, by a trustee or trustees or receiver or receivers appointed in such proceedings in such manner that such obligations shall have the same status as obligations incurred by such a trustee or trustees or receiver or receivers, within 60 days after such proceedings shall have been commenced; or

(f) an event of default set forth in Article 16 of the CSA shall have occurred arising out of any default by the Lessee in performing any of its obligations hereunder or under its Documents (as defined in the Participation Agreement);

then, in any such case, the Owner-Trustee, at its option, may,

(aa) proceed by appropriate court action or actions, either at law or in equity, to enforce performance by the Lessee of the applicable covenants of this Lease or to recover damages for the breach thereof; or

(bb) by notice in writing to the Lessee terminate this Lease, whereupon all rights of the Lessee to the use of the Units shall absolutely cease and terminate as though this Lease had never been made, but the Lessee shall remain liable under this Lease to the extent that this Lease provides that the obligations of the Lessee survive the termination or expiration hereof; and thereupon the Owner-Trustee may by its agents enter upon the premises of the Lessee or other premises where any of the Units may be and take possession of all or any of such Units and thenceforth hold, possess, sell, operate, lease to others and enjoy the same free from any right of the Lessee, or its successors or assigns, to use the Units for any purposes whatever and without any duty to account to the Lessee for such action or inaction or for any proceeds arising therefrom; but the Owner-Trustee shall, nevertheless, have a right to recover from the Lessee any and all amounts which under the terms of this Lease may be then due or which may have accrued to the date of such termination (computing the rental for any number of days less than a full rental period by multiplying the rental for such full rental period by a fraction of which the numerator is such number of days and the denominator is the total number of days in such full rental period) and also to recover forthwith from the Lessee as damages for loss of a bargain and not as a penalty, whichever of the following amounts the Owner-Trustee, in its sole discretion, shall specify: (x) a sum with respect to each Unit which represents the excess of (1) the present value, at the time of such termination, of the entire unpaid balance of all rental for such Unit which would otherwise have accrued hereunder from the date of such termination to the end of the term of this Lease as to such Unit over (2) the then present value of the

rentals which the Owner-Trustee reasonably estimates to be obtainable for the Unit during such period, such present value to be computed in each case on the basis of a 10% per annum discount, compounded semiannually from the respective dates upon which rentals would have been payable hereunder had this Lease not been terminated, together with any damages and expenses, including reasonable attorneys' fees, in addition thereto which the Owner-Trustee shall have sustained by reason of the breach of any covenant, representation or warranty of this Lease other than for the payment of the rental; or (y) an amount equal to the excess, if any, of the Casualty Value as of the rental payment date on or next preceding the date of termination over the amount the Owner-Trustee reasonably estimates to be the sales value (after deduction of all estimated expenses of such sale) of such Unit at such time; provided, however, that in the event the Owner-Trustee shall have sold any Unit, the Owner-Trustee, in lieu of collecting any amounts payable to the Owner-Trustee by the Lessee pursuant to the preceding clauses (x) and (y) of this part (bb) with respect to such Unit, shall demand that the Lessee pay the Owner-Trustee and the Lessee shall pay to the Owner-Trustee on the date of such sale, as liquidated damages for loss of a bargain and not as a penalty, an amount equal to the excess, if any, of the Casualty Value for such Unit, as of the rental payment date on or next preceding the date of termination, over the net proceeds of such sale.

In addition, the Lessee shall be liable, except as otherwise provided above, for any and all unpaid amounts due hereunder before, during or after the exercise of any of the foregoing remedies and for all reasonable attorneys' fees and other costs and expenses incurred by reason of the occurrence of any Event of Default or the exercise of the remedies of the Owner and the Owner-Trustee with respect thereto, including all costs and expenses incurred in connection with the return of any Unit.

10.2. Remedies Not Exclusive; Waiver. The remedies in this Lease provided in favor of the Owner and the Owner-Trustee shall not be deemed exclusive, but shall be cumulative, and shall be in addition to all other remedies

in its favor existing at law or in equity. The Lessee hereby waives any requirements of law, now or hereafter in effect, which might limit or modify the remedies herein provided, to the extent that such waiver is permitted by law. The Lessee hereby waives any and all existing or future claims to any offset against the rental payments due hereunder, and agrees to make rental payments regardless of any offset or claim which may be asserted by the Lessee or on its behalf.

10.3. Failure To Exercise Rights is not Waiver. The failure of the Owner-Trustee to exercise the rights granted it hereunder upon the occurrence of any of the contingencies set forth herein shall not constitute a waiver of any such right upon the continuation or recurrence of any such contingencies or similar contingencies, and a waiver of any such right on one occasion shall not constitute a waiver of such right as to any other occasion and shall not be effective unless in writing signed by the Owner-Trustee.

10.4. Notice of Event of Default to Owner-Trustee. The Lessee also agrees to furnish the Owner-Trustee, the Owner and the Vendor, promptly upon any responsible officer becoming aware of any condition which constitutes an Event of Default under this Lease or which, after notice or lapse of time or both, would constitute such an Event of Default, written notice specifying such condition and the nature and status thereof. For the purposes of this Section, a "responsible officer" shall mean, with respect to the subject matter of any covenant, agreement or obligation of the Lessee in this Lease contained, any corporate official of the Lessee who in the normal performance of his operational responsibilities would have knowledge of such matter and the requirements of this Lease with respect thereto.

## § 11. RETURN OF UNITS UPON DEFAULT

11.1. Return of Units. If this Lease shall terminate pursuant to § 10 hereof, the Lessee shall forthwith deliver possession of the Units to the Owner-Trustee and shall give prompt telegraphic and written notice to the Association of American Railroads and all railroads having

possession of any Unit so to return such Units. Each Unit returned to the Owner-Trustee pursuant to this § 11 shall (i) be in the condition required by § 9.3 hereof and (ii) meet the standards then in effect under the Interchange Rules of the Association of American Railroads, if applicable. For the purpose of delivering possession of any Unit or Units to the Owner-Trustee as above required, the Lessee shall at its own cost, expense and risk:

(a) forthwith and in the usual manner place such Units upon such storage tracks as shall reasonably be designated by the Owner-Trustee,

(b) cause such units to be stored on such tracks without charge for insurance, rent or storage until such Units have been sold, leased or otherwise disposed of by the Owner-Trustee, but not in any event for longer than 270 days, and

(c) cause the Units to be moved to the nearest interchange point or points as shall be designated by the Owner-Trustee.

The assembling, delivery, storage and transporting of the Units as hereinbefore provided shall be at the expense and risk of the Lessee and are of the essence of this Lease, and, upon application to any court of equity having jurisdiction in the premises, the Owner-Trustee shall be entitled to a decree against the Lessee requiring specific performance of the covenants of the Lessee so to assemble, deliver, store and transport the Units. During any storage period, the Lessee will permit the Owner-Trustee or any person designated by it, including the authorized representative or representatives of any prospective purchaser of any such Unit, to inspect the same. In the event that the Units or any thereof are sold the Lessee shall pay to the Owner-Trustee the per diem interchange for each such Unit which shall not have been assembled, delivered and stored, as hereinbefore provided, by the date of such sale for each day from the date of such sale to the date of delivery to the purchaser thereof.

11.2. Owner-Trustee Appointed Agent of Lessee. Without in any way limiting the obligation of the Lessee under the foregoing provisions of this § 11, the Lessee

hereby irrevocably appoints the Owner-Trustee as the agent and attorney of the Lessee, with full power and authority, at any time while the Lessee is obligated to deliver possession of any Unit to the Owner-Trustee, to demand and take possession of such Unit in the name and on behalf of the Lessee from whomsoever shall be in possession of such Unit at the time.

§ 12A. ASSIGNMENT; POSSESSION AND USE

12A.1. Assignment; Consent. This Lease shall be assignable in whole or in part by the Owner-Trustee without the consent of the Lessee, provided that such assignee is the Vendor or a financial institution with a combined capital and surplus of at least \$50,000,000, but the Lessee shall not be under any obligation to any assignee of the Owner-Trustee other than the Vendor except upon written notice of such assignment from the Owner-Trustee and no greater obligations will be imposed on the Lessee on account of such assignment. All the rights of the Owner-Trustee hereunder (including, but not limited to, the rights under §§ 6, 7 and 10 and the rights to receive the rentals payable under this Lease) shall inure to the benefit of the Owner (other than indemnities payable to the Owner-Trustee in its individual capacity) and the respective assigns of the Owner and the Owner-Trustee.

12A.2. Lessee's Right To Use the Units. (1) So long as no Event of Default exists hereunder, the Lessee shall be entitled to the possession and use of the Units in accordance with the terms of this Lease and the CSA, subject to the provisions of § 4.2 of this Lease. The Lessee agrees to use the Units solely within the United States of America except that the Lessee may use the Units in Canada if, but only if:

(a) the use of such Units in Canada does not cause such Units to be property which is used predominantly outside the United States within the meaning of Section 48(a)(2) of the Internal Revenue Code of 1954, as amended, and

(b) the use of such Units in Canada is exclusively within the provinces of Alberta, Saskatchewan, Ontario and Manitoba and the Lessee does not use or permit any use whatsoever of any Unit in Canada at any time outside of those four provinces;

provided, however, that the Lessee may use such Units in locations in Canada outside of the provinces of Alberta, Saskatchewan, Ontario and Manitoba if the Lessee (i) gives notice to the Vendor and the Owner-Trustee of the Lessee's intent to use the Units in locations in Canada outside of the provinces of Alberta, Saskatchewan, Ontario and Manitoba not less than 30 days prior to the commencement of such use and (ii) prior to such use the Lessee delivers an opinion of counsel to the Vendor and the Owner-Trustee, in form, scope and substance satisfactory to the Vendor and the Owner-Trustee, to the effect that the Lessee has caused all publications, notices and filings to be made as shall be necessary to protect the interest of the Owner-Trustee in the Units in such locations in Canada outside of the provinces of Alberta, Saskatchewan, Ontario and Manitoba and to protect the security interest of the Vendor in the Units and in the income and proceeds of the Equipment while any Units are in such locations in Canada outside of the provinces of Alberta, Saskatchewan, Ontario and Manitoba.

(2) The Lessee shall not assign or transfer its leasehold interest under this Lease in the Units or any of them without the prior written consent of the Trustee and the Agent, except as provided in paragraph (3) of this § 12A.2; and the Lessee shall not part with the possession or control of, or suffer or allow to pass out of its possession or control, any of the Units without the prior written consent of the Owner-Trustee and the Vendor except as provided in said paragraph (3).

(3) So long as no Event of Default exists hereunder, the Lessee shall be entitled to the possession and use of the Units by it or any affiliate upon lines of any railroad or other trackage over which railroad equipment is regularly operated and shall be entitled to permit the use of the Units upon connecting and other carriers in the usual interchange of traffic or pursuant to run-through or trip-lease agreements and to sublease the Units, but only upon and subject to all the terms and conditions of this Lease and the CSA; provided, however, that the Lessee shall not assign, sublease or use or permit the assignment, sublease or use of any Unit except upon the terms and conditions of this Lease and the CSA, nor shall the Lessee assign or sublease to or permit the sublease or use of the Units by any person in whose hands such Units would not qualify as "section 38 property" within the meaning of said Code. Any sublease permitted by this paragraph shall be expressly subordinate to the right and remedies of the Vendor under the CSA and the Owner-Trustee under this Lease in respect of the Units



covered by such sublease and no such sublease shall relieve the Lessee of any of its obligations hereunder which, notwithstanding any such sublease, shall remain in full force and effect.

12A.3. Lessee's Duty To Discharge Encumbrances.

The Lessee, at its own expense, will as soon as possible cause to be duly discharged any lien, charge, security interest or other encumbrance (other than an encumbrance resulting from claims against the Owner-Trustee or the Vendor not related to the ownership or leasing of, or the security interest of the Vendor in, the Units) which may be imposed during the term hereof, during the period the Lessee is obligated to pay rental hereunder or during the period any Unit is in the possession of the Lessee following default, on or with respect to any Unit (including any accession thereto) or the interest of the Owner-Trustee, the Vendor or the Lessee therein; except that this covenant will not be breached by reason of liens, assessments or governmental charges or levies, in each case not due and delinquent, or undetermined or inchoate materialman's, mechanic's, workmen's, repairmen's or other like liens arising in the ordinary course of business in each case not delinquent, and furthermore, the Lessee shall be under no obligation to discharge any such lien, charge, security interest or encumbrance so long as it is contesting the same in good faith and by appropriate legal proceedings and the Owner-Trustee or the Agent advise the Lessee in writing that the failure to discharge the same does not adversely affect the title, property or rights of Owner-Trustee or the Agent under the Documents.

12A.4. Merger, Acquisition or Consolidation.

Nothing in this § 12A shall be deemed to restrict the right of the Lessee to assign or transfer its leasehold interest under this Lease in the Units or possession of the Units to any solvent corporation incorporated under the laws of any state of the United States of America or the District of Columbia (which shall have specifically assumed the obligations of the Lessee hereunder and under the Consent by an appropriate instrument in writing) into or with which the Lessee shall have become merged or consolidated or which shall have acquired the property of the Lessee as an entirety or substantially as an entirety, provided that such assignee or transferee will not, upon the effectiveness of such merger, consolidation or acquisition be in default under any provision of this Lease.

12A.5. Mileage. During the term of this lease the Lessee shall receive, insofar as applicable law and regulations allow, all mileage allowances, rentals and/or compensation payable by carriers by reason of the use of any unit (hereinafter called "mileage") leased to the Lessee hereunder. It is understood and agreed that if for any reason the Owner-Trustee receives any mileage, then (unless an Event of Default shall have occurred and be continuing) the Owner-Trustee shall promptly remit such mileage to the Lessee.

#### § 12B. RENEWAL OPTIONS

12B.1. Renewal for Successive Period. The parties hereto contemplate that at the end of the original term of this Lease, the Owner-Trustee will hold the Units for re-lease. Prior to the delivery of the Units pursuant to § 2 hereof, the Owner-Trustee will enter into an agreement ("Option") with Tiger Financial Services, Inc. ("Tiger"), pursuant to which the Owner-Trustee will grant to Tiger the option to lease all but not fewer than all the Units for a one year term ("Tiger's Lease") commencing at the end of the original term of this Lease on such terms as are set forth in the Option and the right to purchase all but not fewer than all the Units at the end of the original term of this Lease and at the end of Tiger's Lease. The Owner-Trustee will give the Lessee prompt written notice in the event that Tiger exercises any of its rights under the Option. In the event that Tiger purchases the Equipment at the end of the original term of this Lease or at the end of Tiger's Lease, the Lessee will have no renewal rights under this Lease. Provided that this Lease has not been earlier terminated and the Lessee is not in default hereunder and no event of default or event which with the lapse of time and/or the demand or the giving of notice provided hereunder could constitute an Event of Default hereunder, and provided that Tiger shall not have exercised its Option, then the Lessee may by written notice delivered to the Owner-Trustee not less than 120 days nor more than 270 days prior to the end of the original term (or the First Extended Term (as hereinafter defined), if any, as applicable) of this Lease elect to extend such term of this Lease in respect of not less than all the Units then covered by this Lease (a) for a period of five years commencing on the scheduled expiration of the original term of this Lease at a "Fair Market Rental" payable, in arrears, in semiannual payments on the day such rentals were payable for the Units during the original term

of this Lease or (b) for a period of three years commencing on the scheduled expiration of the original term of this Lease ("First Extended Term") followed by a period of two years commencing on the scheduled expiration of the First Extended Term at a "Fair Market Rental" (to be determined before each additional term) payable, in arrears, in semi-annual payments on the day such rentals were payable for the Units during the original term of this Lease. In the event that Tiger exercises its Option to lease the Units, then the Lessee may by written notice delivered to the Owner-Trustee not less than 120 days or more than 270 days prior to the end of Tiger's Lease (or the first two year renewal term, if any, as applicable) elect to renew this Lease for all the Units then subject to Tiger's Lease (x) for a period of four years commencing on the scheduled expiration of Tiger's Lease at a "Fair Market Rental" payable, in arrears, in semiannual payments on the day such rentals were payable for the Units in each year of the original term of this Lease or (y) for two additional two-year terms commencing on the scheduled expiration of Tiger's Lease at a "Fair Market Rental" (to be determined before each additional term) payable, in arrears, in semi-annual payments on the day such rentals were payable for the Units during the original term of this Lease. In the event of any such extension or renewal, the Casualty Value payable in respect of a Casualty Occurrence involving any Unit shall be as agreed upon by the Owner-Trustee and the Lessee, and in the event that no agreement is reached, the Casualty Value will be determined according to the procedures outlined in § 12B.2 below regarding Fair Market Rental.

12B.2. Determination of Fair Market Rental.

(1) The Fair Market Rental for any extended term of this Lease shall be equal to the rental which would obtain in an arm's-length transaction between an informed and willing lessee (other than a lessee currently in possession) and an informed and willing lessor under no compulsion to lease, and costs of removal from the location of current use shall not be a deduction from such rental.

(2) If, within 25 days from the giving of notice by the Lessee of the Lessee's election to extend the term of this Lease, the Owner-Trustee and the Lessee are unable to agree upon a determination of the Fair Market Rental of the Units, either party to such determination may give written notice to the other ("Appraisal Notice") requesting determination of such Fair Market Rental by an appraisal procedure. The parties shall consult for the

purpose of appointing a qualified independent appraiser by mutual agreement. If no such appraiser is so appointed within 15 days after the Appraisal Notice, each party shall appoint an appraiser within 20 days after the Appraisal Notice, and the two appraisers so appointed shall within 30 days after the Appraisal Notice appoint a third independent appraiser. If no such third appraiser is appointed within 30 days after the Appraisal Notice, either party may apply to make such appointment to the American Arbitration Association and both parties shall be bound by any appointment so made. Any appraiser or appraisers appointed pursuant to the foregoing procedure shall be instructed to determine the Fair Market Rental of the Units subject to the proposed extended term within 75 days after the Appraisal Notice. If the parties shall have appointed a single appraiser or if either party shall have failed to appoint an appraiser, the determination of Fair Market Rental of the single appraiser appointed shall be final. If 3 appraisers shall be appointed, the determination of the appraiser which differs most from the other 2 appraisers shall be excluded, the remaining 2 determinations shall be averaged and such latter average shall be final and binding upon the parties hereto as the Fair Market Rental. The appraisal proceedings shall be conducted in accordance with the Commercial Arbitration Rules of the American Arbitration Association but not under its auspices as in effect on the date hereof, except as modified hereby. The provision for this appraisal procedure shall be the exclusive means of determining Fair Market Rental and shall be in lieu of any judicial or other procedure for the determination thereof, and each party hereto hereby consents and agrees not to assert any judicial or other procedures. The expenses of the appraisal procedure shall be borne equally by the Lessee and the Owner-Trustee or Tiger, as the case may be.

12C. Right of First Refusal. Provided that this Lease has not been earlier terminated and the Lessee is not in default hereunder and subject to the rights of Tiger to purchase the Units at the end of the original term of this Lease and at the end of Tiger's Lease, in the event the Owner-Trustee elects to sell any Units to third parties at the expiration of the original or extended term of this Lease, the Lessee shall be given written notice of such intention not less than 60 days prior to the expiration of such term. In the event that the Owner-Trustee shall receive, prior to removal of the Units at the end of such

term of the Lease, a bona fide offer in writing from another party unrelated to the Lessee to purchase the Units and the Owner-Trustee elects to sell the Units pursuant to such offer, the Owner-Trustee shall give prompt written notice to the Lessee of such offer. Such notice shall include the price and the terms and conditions of payment offered by the other party in writing to the Owner-Trustee. The Lessee shall have the sole right and option to purchase the Units for cash at the price at which the Units are proposed to be sold or under the other terms and conditions of payment offered by the other party, as hereinafter provided. Within 10 business days of receipt of notice from the Owner-Trustee, the Lessee shall exercise such purchase right by delivery to the Owner-Trustee of a written notice specifying a date of purchase, which date shall not be later than the later of (i) 15 days after the date of delivery of such notice by the Lessee to the Owner-Trustee or (ii) 90 days after the expiration of such term of this Lease. In the event that the Lessee shall have delivered a notice of its election to purchase the Units, this Lease (including the obligation to pay rent) shall be further extended upon the same terms and conditions set forth herein from the date such notice is delivered to the Owner-Trustee until the date of such purchase.

### § 13. RETURN OF UNITS UPON EXPIRATION OF TERM

On or prior to the termination of the term of this Lease (or any renewal pursuant to § 12B hereof) the Lessee will, at its own cost and expense, at the request of the Owner-Trustee, deliver possession of the Units to the Owner-Trustee upon such storage tracks as the Owner-Trustee may reasonably designate (but in no event at more than three locations), or, in absence of such designation, as the Lessee may select, and permit the Owner-Trustee to store such Units on such tracks for a period not exceeding 60 days from the date at which at least 90% of the Units then subject to this Lease are first placed in storage; the assembly, delivery, storage and transporting of such Unit to be at the expense and risk of the Lessee. Arrival of a Unit at the designated point shall constitute "Return" for the purposes hereof. During any such storage period the Lessee will permit the Owner-Trustee or any person designated by it, including the authorized representative or representatives of any prospective purchaser or lessee of such Unit, to

inspect the same at the storage locations; provided, however, that the Lessee shall not be liable except in the case of negligence or intentional act of the Lessee or of its employees or agents and, except to the extent otherwise provided by law, for any injury to or the death of any person exercising, either on behalf of the Owner-Trustee or any prospective purchaser or lessee, the rights of inspection granted under this sentence. The assembly, delivery, storage and transporting of the Units as hereinbefore provided are of the essence of this Lease, and upon application to any court of equity having jurisdiction in the premises, the Owner-Trustee shall be entitled to a decree against the Lessee requiring specific performance of the covenants of the Lessee so to cause the assembly, delivery, storage and transporting of the Units. Each Unit returned to the Owner-Trustee pursuant to this § 13 shall (i) be in the condition required by § 9.3 hereof, (ii) have attached or affixed thereto any part title to which is in the Owner-Trustee pursuant to § 9 hereof and have removed therefrom at the Lessee's expense any part title to which is in the Lessee or any other person pursuant to such § 9 and (iii) meet the standards then in effect under the Interchange Rules of the Association of American Railroads, if applicable, provided that the Lessee shall not be required to make any additions, modifications or improvements which would not be required of the Lessee if the Lessee continued to operate the Units. If any Unit suffers a Casualty Occurrence during any storage period provided for in this § 13, the Lessee shall pay to the Owner-Trustee the Casualty Value of such Unit as determined in accordance with § 7 hereof. The Lessee shall pay rental at the rate of .031674% of the Purchase Price of such Unit per day for any Unit not returned to the Owner-Trustee immediately upon expiration of the termination of the initial or any extended term of this Lease.

#### § 14. RECORDING

The Lessee, at its own expense, will cause this Lease, the CSA, the Lease Assignment and any assignment hereof or thereof to be filed and recorded (i) with the Interstate Commerce Commission in accordance with 49 U.S.C. § 11303 and (ii) in the applicable offices of Alberta, Saskatchewan, Ontario and Manitoba. The Lessee will undertake the filing, registering, deposit and recording required of the Owner-Trustee under the CSA and will from time to time

do and perform any other act and will execute, acknowledge, deliver, file, register, record (and will refile, reregister, deposit and redeposit or rerecord whenever required) any and all further instruments required by law or reasonably requested by the Owner-Trustee or the Vendor for the purpose of proper protection, to their satisfaction, of the Vendor's and the Owner-Trustee's respective interests in the Units, or for the purpose of carrying out the intention of this Lease, the CSA or the Lease Assignment.

The Lessee will promptly furnish to the Vendor and the Owner-Trustee evidence of all such filing, registering, depositing or recording, and an opinion or opinions of counsel for the Lessee with respect thereto satisfactory to the Vendor and the Owner-Trustee. This Lease and the CSA shall be filed and recorded with the Interstate Commerce Commission prior to the delivery and acceptance hereunder of any Unit.

#### § 15. INTEREST ON OVERDUE RENTALS

Anything to the contrary herein contained notwithstanding, any nonpayment of rentals and other obligations due hereunder shall result in the obligation on the part of the Lessee promptly to pay an amount equal to interest at a rate equal to the lesser of 15% per annum or the highest rate as may be legally enforceable on the overdue rentals and other obligations for the period of time during which they are overdue.

#### § 16. NOTICES

Any notice required or permitted to be given by either party hereto to the other shall be deemed to have been given when delivered to such other party or deposited in the United States mails, first-class postage prepaid, addressed as follows:

if to the Owner-Trustee, at 130 South LaSalle Street, Chicago, Illinois 60603, Attention of Corporate Trust Officer; with a copy to the Owner at 300 North Ervay, Republic National Bank Building, Dallas, Texas 75201, Attention of the President;

if to the Lessee, at P.O. Box 1219R, Columbia Road and Park Avenue, Morristown, New Jersey 07960, Attention of Assistant Treasurer;

or addressed to any party at such other address as such party shall hereafter furnish to the other parties in writing. Copies of each such notice shall be given to the Vendor at 135 South La Salle Street, Chicago, Illinois 60690, attention of Corporate Trust Officer or such other address designated by the Vendor. Any certificate, document or report required to be furnished by any party hereto to the other parties shall be delivered to the address set forth above for such party. Any notice to the Lessee by the Vendor regarding the Lessee's failure to perform any obligation hereunder shall also be furnished by the Lessee to the Owner-Trustee.

§ 17. SEVERABILITY; EFFECT AND  
MODIFICATION OF LEASE;  
THIRD-PARTY BENEFICIARIES

17.1. Severability. Any provision of this Lease which is prohibited or unenforceable in any jurisdiction shall be, as to such jurisdiction, ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof, and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction.

17.2. Effect of Modification of Lease. This Lease and the Indemnity Agreement exclusively and completely state the rights of the Owner-Trustee and the Lessee with respect to the leasing of the Units and supersede all other agreements, oral or written, with respect thereto, except the Participation Agreement. No variation or modification of this Lease and no waiver of any of its provisions or conditions shall be valid unless in writing and signed by duly authorized signatories for the Owner-Trustee and the Lessee.

17.3. No Third-Party Beneficiaries. Nothing in this Lease shall be deemed to create any right in any person not a party hereto (other than the Owner, the Vendor and the permitted successors and assigns of a party) and this instrument shall not be construed in any respect to be a contract in whole or in part for the benefit of any third party except as aforesaid.



#### § 18. EXECUTION

This Lease may be executed in several counterparts, such counterparts together constituting but one and the same instrument, but the counterpart delivered to the Vendor pursuant to the Lease Assignment shall be deemed to be the original and all other counterparts shall be deemed duplicates thereof.

#### § 19. IMMUNITIES: NO RECOURSE

It is expressly understood and agreed by and between the parties hereto, anything herein to the contrary notwithstanding, that each and all the representations, undertakings, covenants, warranties and agreements herein made on the part of the Owner-Trustee are made and intended not as personal representations, undertakings, covenants, warranties and agreements by Exchange National Bank of Chicago, or for the purpose or with the intention of binding said bank personally but are made and intended for the purpose of binding only the Trust Estate as such term is used in the Trust Agreement and this Lease is executed and delivered by said national association not in its own right but solely in the exercise of the powers expressly conferred upon it as trustee under the Trust Agreement; and except in the case of gross negligence or wilful misconduct, no personal liability or personal responsibility is assumed by or shall at any time be asserted or enforceable against said bank on account of this Lease or on account of any representations, undertaking, covenant, warranty or agreement of the Owner-Trustee, either expressed or implied, all such personal liability against either said bank or the Owner, if any, being expressly waived and released by the Lessee, the Vendor and by all persons claiming by, through or under either of them.

#### § 20. LAW GOVERNING

The terms of this Lease and all rights and obligations hereunder shall be governed by the laws of the State of Illinois; provided, however, that the parties shall be entitled to all rights conferred by 49 U.S.C. § 11303.

IN WITNESS WHEREOF, the parties hereto have exe-

cuted or caused this instrument to be executed as of the date first above written.

EXCHANGE NATIONAL BANK OF  
CHICAGO, not in its indi-  
vidual capacity, but solely  
as Owner-Trustee, under the  
Trust Agreement dated as of  
the date hereof with Republic  
National Leasing Corporation,

by

[CORPORATE SEAL]

\_\_\_\_\_  
Authorized Officer

Attest:

\_\_\_\_\_  
Authorized Officer

ALLIED CHEMICAL CORPORATION,

by

[CORPORATE SEAL]

Attest:

STATE OF NEW JERSEY, )  
 ) ss.:  
COUNTY OF MORRIS, )

On this                      day of                      1981, before me personally appeared                      , to me personally known, who, being by me duly sworn, says that he is the                      of ALLIED CHEMICAL CORPORATION, a New York corporation, that one of the seals affixed to the foregoing instrument is the corporate seal of said Corporation, that said instrument was signed and sealed on behalf of said Corporation by authority of its Board of Directors and he acknowledged that the execution of the foregoing instrument was the free act and deed of said Corporation.

Notary Public

[Notarial Seal]

## My Commission Expires

STATE OF ILLINOIS, )  
 ) ss.:  
COUNTY OF COOK, )

On this                      day of                      1981, before me personally appeared                      , to me personally known, who, being by me duly sworn, says that he is an Authorized Officer of EXCHANGE NATIONAL BANK OF CHICAGO, that one of the seals affixed to the foregoing instrument is the corporate seal of said national association, that said instrument was signed and sealed on behalf of said national association by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said national association.

Notary Public

[Notarial Seal]

My Commission Expires

Schedule A to the Lease

<u>Type</u>	<u>Quantity</u>	<u>Lessee's Road Numbers (Both Inclusive)</u>
13,500 gallon coiled insulated tank cars DOT 111A 100W3	145	AFPX 413213- 413357

## CASUALTY VALUES

<u>Rental Payment Date</u>	<u>Percentage of Purchase Price*</u>
1/2/82	104.5170%
7/2/82	105.6127
1/2/83	105.7243
7/2/83	106.3625
1/2/84	105.8815
7/2/84	106.0857
1/2/85	98.8744
7/2/85	98.5588
1/2/86	97.0746
7/2/86	96.3259
1/2/87	88.1696
7/2/87	86.9099
1/2/88	84.5469
7/2/88	82.8724
1/2/89	73.9128
7/2/89	71.7569
1/2/90	68.7025
7/2/90	66.1975
1/2/91	62.9343
7/2/91	60.1699
1/2/92	56.7192
7/2/92	53.6778
1/2/93	50.0265
7/2/93	46.6872
1/2/94	42.8633
7/2/94	39.5243
1/2/95	35.6347
7/2/95	31.9355
1/2/96	28.0000

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\* As defined in the CSA.

Schedule C to the Lease

DETERMINATION OF TERMINATION VALUES

<u>Rental Payment Date</u>	<u>Percentage of Purchase Price*</u>
1/2/89	76.9660%
7/2/89	74.4274
1/2/90	71.0050
7/2/90	68.2137
1/2/91	64.6757
7/2/91	61.6546
1/2/92	57.9607
7/2/92	54.6949
1/2/93	50.8350
7/2/93	47.2797
1/2/94	43.2549
7/2/94	39.7519
1/2/95	35.7392
7/2/95	31.9625
1/2/96	28.0000

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\* As defined in the CSA.

ASSIGNMENT OF LEASE AND AGREEMENT dated as of March 15, 1981, ("Assignment"), by and between EXCHANGE NATIONAL BANK OF CHICAGO ("Owner-Trustee"), acting not in its individual capacity but solely as trustee under the Trust Agreement dated as of the date hereof with Republic National Leasing Corporation, and LaSalle National Bank ("Agent") as Agent for certain Investors under a Participation Agreement dated as of the date hereof ("Investors").

The Owner-Trustee is entering into a Conditional Sale Agreement dated as of the date hereof ("CSA") with Trinity Industries, Inc. ("Trinity"), providing for the sale to the Owner-Trustee of such units of railroad equipment ("Units") described in Annex B thereto as are delivered to and accepted by the Owner-Trustee thereunder.

The Owner-Trustee and Allied Chemical Corporation ("Lessee") have entered into a Lease of Railroad Equipment dated as of the date hereof ("Lease") providing for the leasing by the Owner-Trustee to the Lessee of the Units.

NOW, THEREFORE, in consideration of the premises and of the payments to be made and the covenants herein-after mentioned to be kept and performed, the parties hereto agree as follows:

1. The Owner-Trustee hereby assigns, transfers and sets over unto the Agent, as collateral security for the payment and performance of the obligations of the Owner-Trustee under the CSA, all the right, title and interest, powers, privileges, and other benefits of the Owner-Trustee under the Lease, including, without limitation, the immediate right to receive and collect all rentals, profits and other sums payable to or receivable by the Owner-Trustee from the Lessee whether as rent, casualty payment, indemnity, liquidated damages or otherwise, except for amounts payable to the Owner-Trustee (as Trustee or in its individual capacity) or the Owner (as defined in the CSA) pursuant to § 6 or 9 of the Lease (such moneys being hereinafter called the "Payments"), and the right to make all waivers and agreements, to give all notices, consents and releases, to take all action upon the happening of an Event of Default specified in the Lease, and to do any and all other things whatsoever which the Owner-Trustee is or may become entitled to do under

the Lease. In furtherance of the foregoing assignment, the Owner-Trustee hereby irrevocably authorizes and empowers the Agent in its own name, or in the name of its nominee, or in the name of the Owner-Trustee or as its attorney, to ask, demand, sue for, collect and receive any and all Payments to which the Owner-Trustee is or may become entitled to under the Lease, and to enforce compliance by the Lessee with all the terms and provisions thereof.

The Agent agrees to accept any Payments made by the Lessee for the account of the Owner-Trustee pursuant to the Lease. To the extent received, the Agent will apply such Payments to satisfy the obligations of the Owner-Trustee under the CSA, and to provide for the payments required to be made by the Owner-Trustee pursuant to the final paragraph of § 9.1 of the Participation Agreement, and, so long as no Event of Default shall have occurred and be continuing under the CSA, any balance shall be paid to the Owner-Trustee on the same date such Payment is applied to satisfy such obligations of the Owner-Trustee, by check mailed to the Owner-Trustee on such date or, upon written request of the Owner-Trustee, by bank wire to the Owner-Trustee at such address as may be specified to the Agent in writing, and such balance shall be retained by the Owner-Trustee. If the Agent shall not receive any rental payment under the first paragraph of § 3 of the Lease when due, the Agent shall notify the Owner-Trustee at the address set forth in the Lease; provided, however, that the failure of the Agent so to notify the Owner-Trustee shall not affect the obligations of the Owner-Trustee hereunder or under the CSA.

2. This Assignment is executed only as security and, therefore, the execution and delivery of this Assignment shall not subject the Agent to, or transfer, or pass, or in any way affect or modify the liability of the Owner-Trustee under the Lease, it being understood and agreed that notwithstanding this Assignment or any subsequent assignment, all obligations of the Owner-Trustee to the Lessee shall be and remain enforceable by the Lessee, its successors and assigns, against, and only against, the Owner-Trustee or persons other than the Agent.

3. The Owner-Trustee will faithfully abide by, perform and discharge each and every obligation, covenant and agreement which the Lease provides is to be performed



by the Owner-Trustee; without the written consent of the Agent, the Owner-Trustee will not anticipate the rents under the Lease or waive, excuse, condone, forgive or in any manner release or discharge the Lessee thereunder of or from the obligations, covenants, conditions and agreements to be performed by the Lessee, including, without limitation, the obligation to pay the rents in the manner and at the time and place specified therein or enter into any agreement amending, modifying or terminating the Lease, and the Owner-Trustee agrees that any amendment, modification or termination thereof without such consent shall be void.

4. The Owner-Trustee does hereby constitute the Agent the true and lawful attorney of the Owner-Trustee, irrevocably, with full power (in the name of the Owner-Trustee, or otherwise), to ask, require, demand, receive and compound any and all Payments due and to become due under or arising out of the Lease to which the Owner-Trustee is or may become entitled, to enforce compliance by the Lessee with all the terms and provisions of the Lease, to endorse any checks or other instruments or orders in connection therewith and to file any claims or take any action or institute any proceedings which to the Agent may seem to be necessary or advisable in the premises.

5. Upon the full discharge and satisfaction of all sums due from the Owner-Trustee under the CSA, this Assignment and all rights herein assigned to the Agent shall terminate, and all estate, right, title and interest of the Agent in and to the Lease shall revert to the Owner-Trustee.

6. The Owner-Trustee will pay and discharge any and all claims, liens, charges or security interests (other than those created by the CSA) on the Lease or the rentals or other payments due or to become due thereunder claimed by any party from, through or under the Owner-Trustee, or its successors and assigns (other than the Agent or any successor trustee), not arising out of the transactions contemplated by the CSA or the Lease (but including tax liens arising out of the receipt of the income and proceeds from the Units), which, if unpaid, might become a claim, lien, charge or security interest on or with respect to the Lease, or such rentals or other payments equal or superior to the interest therein of the Agent, unless the Owner-Trustee shall be contesting the same in good faith by

appropriate proceedings in any reasonable manner and the nonpayment thereof does not, in the reasonable opinion of the Agent, adversely affect such interests of the Agent.

7. The Owner-Trustee will, from time to time, execute, acknowledge and deliver any and all further instruments required by law as reasonably requested by the Agent in order to confirm or further assure the interest of the Agent hereunder.

8. The Agent may assign all or any of the rights assigned to it hereby or arising under the Lease, including, without limitation, the right to receive any Payments due or to become due. In the event of any such assignment, any such subsequent or successive assignee or assignees shall, to the extent of such assignment, enjoy all the rights and privileges and be subject to all the obligations of the Agent hereunder.

9. This Assignment shall be governed by the laws of the State of Illinois, but the parties shall be entitled to all rights conferred by 49 U.S.C. § 11303.

10. The Owner-Trustee shall cause copies of all notices received in connection with the Lease, and all payments hereunder to be promptly delivered or made to the Agent at its address set forth in Article 21 of the CSA, or at such other address as the Agent shall designate.

11. The Agent hereby agrees with the Owner-Trustee that the Agent will not, so long as no Event of Default under the Lease, or event of default under the CSA has occurred and is continuing, exercise or enforce, or seek to exercise or enforce, or avail itself of, any of the rights, powers, privileges, authorizations or benefits which are assigned and transferred by the Owner-Trustee to the Agent by this Assignment, except the right to receive and apply the Payments as provided in Paragraph 1 hereof, and that, subject to the terms of the Lease and the CSA, the Owner-Trustee may, so long as no event of default under the CSA or Event of Default under the Lease has occurred and is continuing, exercise or enforce, or seek to exercise or enforce or avail itself of, such rights, powers, privileges, authorizations or benefits.

12. It is expressly understood and agreed by and between the parties hereto, anything herein to the contrary notwithstanding, that each and all of the representations, undertakings, covenants, warranties and agreements herein

made on the part of the Owner-Trustee are each and every one of them made and intended not as personal representations, undertakings, covenants, warranties and agreements by Exchange National Bank of Chicago or for the purpose or with the intention of binding said national association personally but are made and intended for the purpose of binding only the Trust Estate as such term is used in the Trust Agreement, and this Assignment is executed and delivered by the said national association solely in the exercise of its powers expressly conferred upon it as trustee under the Trust Agreement, and that no personal liability or personal responsibility is assumed by or shall at any time be asserted or enforceable against said national association (except for wilful misconduct or gross negligence of the Owner-Trustee), either expressed or implied, all such personal liability, if any, being expressly waived and released by the Agent and by all persons claiming by, through or under the Agent; provided, however, that the Agent or any person claiming by, through or under it, making claim hereunder, may look to said Trust Estate for satisfaction of the same.

13. This Assignment may be executed in any number of counterparts, all of which together shall constitute a single instrument, but the counterpart delivered to the Agent shall be deemed to be the original counterpart. Although for convenience this Assignment is dated as of the date first above written, the actual dates of execution hereof by the parties hereto are the dates stated in the acknowledgments hereto annexed.

IN WITNESS WHEREOF, the parties hereto have caused this instrument to be executed in their respective corporate names by officers thereunto duly authorized, and their respective corporate seals to be affixed and duly attested, all as of the date first above written.

EXCHANGE NATIONAL BANK OF CHICAGO,  
not in its individual capacity,  
but solely as trustee under the  
Trust Agreement dated as of the  
date hereof with Republic National  
Leasing Corporation,

by

[Corporate Seal]

\_\_\_\_\_  
Authorized Officer

Attest:

\_\_\_\_\_  
Authorized Officer

LA SALLE NATIONAL BANK,  
as Agent,

by

[Corporate Seal]

\_\_\_\_\_  
Vice President

Attest:

\_\_\_\_\_  
Assistant Secretary

STATE OF ILLINOIS, )  
 ) ss.:  
COUNTY OF COOK, )

On this            day of            1981, before me personally appeared            , to me personally known, who, being by me duly sworn, says that he is a Vice President of LA SALLE NATIONAL BANK, that one of the seals affixed to the foregoing instrument is the corporate seal of said national association and that said instrument was signed and sealed on behalf of said national association by authority of its Board of Directors and he acknowledged that the execution of the foregoing instrument was the free act and deed of said national association.

[Notarial Seal]

\_\_\_\_\_  
Notary Public

My Commission expires

STATE OF ILLINOIS, )  
 ) ss.:  
COUNTY OF COOK, )

On this            day of            1981, before me personally appeared            , to me personally known, who, being by me duly sworn, says that he is a            of EXCHANGE NATIONAL BANK OF CHICAGO, that one of the seals affixed to the foregoing instrument is the corporate seal of said national association and that said instrument was signed and sealed on behalf of said national association by authority of its Board of Directors and he acknowledged that the execution of the foregoing instrument was the free act and deed of said national association.

[Notarial Seal]

\_\_\_\_\_  
Notary Public

My Commission expires

## CONSENT AND AGREEMENT

The undersigned, ALLIED CHEMICAL CORPORATION ("Lessee"), the Lessee named in the Lease of Railroad Equipment ("Lease") referred to in the foregoing Assignment of Lease and Agreement ("Lease Assignment"), hereby (a) acknowledges receipt of a copy of the Lease Assignment and (b) consents to all the terms and conditions of the Lease Assignment and agrees that:

(1) it will pay or cause to be paid all rentals, casualty payments, liquidated damages, indemnities (except for indemnities specifically excluded from the Lease Assignment) and other moneys provided for in the Lease (which moneys are hereinafter called the Payments) due and to become due under the Lease or otherwise in respect of the Units leased thereunder, directly to LA SALLE NATIONAL BANK, as Agent ("Agent"), the assignee named in the Lease Assignment, 135 South La Salle Street, Chicago, Illinois 60690, Attention of Corporate Trust Department (or at such other address as may be furnished in writing to the Lessee by the Agent).

(2) the Agent shall be entitled to the benefits of, and to receive and enforce performance of, all the covenants to be performed by the Lessee under the Lease as though the Agent were named therein as the lessor;

(3) the Agent shall not, by virtue of the Lease Assignment or this Consent and Agreement, be or become subject to any liability or obligation under the Lease or otherwise; and

(4) the Lease shall not, without the prior written consent of the Agent, be terminated (except in accordance with its terms) or modified, nor shall any action be taken or omitted by the Lessee the taking or omission of which might result in an alteration or impairment of the Lease or the Lease Assignment or this Consent and Agreement or of any of the rights created by any thereof.

This Consent and Agreement, when accepted by the

Agent by signing the acceptance at the foot hereof, shall be deemed to be a contract under the laws of the State of Illinois and, for all purposes, shall be construed in accordance with the laws of said state.

ALLIED CHEMICAL CORPORATION,

by

[Seal] \_\_\_\_\_

Witness:

\_\_\_\_\_

The foregoing Consent and Agreement is hereby accepted, as of March 15, 1981.

LA SALLE NATIONAL BANK,  
as Agent,

by

\_\_\_\_\_  
Vice President

*Exchange*

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[CS&M Ref. 4876-027]

CONDITIONAL SALE AGREEMENT

Dated as of March 15, 1981

Between

TRINITY INDUSTRIES, INC.

and

EXCHANGE NATIONAL BANK OF CHICAGO,  
not in its individual capacity but solely as  
trustee under the Trust Agreement  
dated as of the date hereof with  
Republic National Leasing Corporation.

14% Conditional Sale Indebtedness Due 1996

[Covering 145 Tank Cars]

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## CONDITIONAL SALE AGREEMENT

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\* This Table of Contents has been included for convenience only and does not form a part of this document.

CONDITIONAL SALE AGREEMENT dated as of March 15, 1981, between TRINITY INDUSTRIES, INC., a Texas corporation ("Trinity" or "Vendor" as the context may require, as set forth in Section 1.3 hereof), and EXCHANGE NATIONAL BANK OF CHICAGO, a national banking association, acting not in its individual capacity but solely as trustee ("Trustee") under the Trust Agreement dated as of the date hereof ("Trust Agreement") with REPUBLIC NATIONAL LEASING CORPORATION, a Texas corporation ("Owner").

Trinity has agreed to conditionally sell to the Trustee, subject to the terms and conditions hereof, the railroad equipment described in Annex B hereto ("Equipment").

The Trustee is entering into a Lease of Railroad Equipment with ALLIED CHEMICAL CORPORATION ("Lessee"), substantially in the form of Annex C hereto ("Lease").

LA SALLE NATIONAL BANK ("Agent") is acting as agent for certain investors including an interim investor ("Interim Investor") (the investors and the Interim Investor hereinafter called the "Investors") pursuant to a Participation Agreement dated as of the date hereof ("Participation Agreement") among the Lessee, the Agent, the Owner, the Trustee and such Investors.

In consideration of the agreements hereinafter set forth, the parties hereto hereby agree as follows:

#### ARTICLE 1. ASSIGNMENT; DEFINITIONS

1.1. Contemplated Sources of Purchase Price; Assignment. The parties hereto contemplate that the Trustee will furnish 31.542065% of the Purchase Price (as defined in Section 4.1 hereof) of the Equipment and that an amount equal to the balance of such Purchase Price shall be paid to Trinity by the Agent pursuant to an Agreement and Assignment dated as of the date hereof ("CSA Assignment") between Trinity and the Agent.

1.2. Lease Assignment. As security for the

payment and performance of all the Trustee's obligations hereunder, the Trustee will assign to the Agent certain of the rights, title and interests of the Trustee in and to the Lease pursuant to an Assignment of Lease and Agreement substantially in the form of Annex D hereto ("Lease Assignment"), and the Lessee shall acknowledge and consent thereto pursuant to a Consent and Agreement substantially in the form attached to the Lease Assignment ("Consent").

1.3. Meaning of "Trinity" and "Vendor". The term "Trinity", whenever used in this Agreement, means, both before and after any assignment of its rights hereunder, Trinity Industries, Inc., and any successor or successors to its properties and business. The term "Vendor", whenever used in this Agreement, means Trinity before any assignment of its rights and, after any such assignment, both any assignee as regards any assigned rights and also any assignor as regards any rights retained by such assignor.

## ARTICLE 2. CONSTRUCTION AND SALE

Trinity shall construct the Equipment at its plant or plants set forth in Annex B hereto and will sell and deliver the Equipment to the Trustee. Each unit of Equipment shall be constructed in accordance with the specifications referred to in Annex B and the Purchase Order (as hereinafter defined) hereto and in accordance with such modifications thereof as may be agreed upon in writing between Trinity, the Trustee and the Lessee (such specifications and any modifications called "Specifications"). The design, quality and component parts of each unit of Equipment shall conform, on the date of delivery and acceptance thereof, to all United States Department of Transportation and Interstate Commerce Commission requirements and specifications and to all standards, if any, recommended by the Association of American Railroads reasonably interpreted as being applicable to each such unit of Equipment and each such unit will be new railroad equipment when delivered to the Trustee and the original use thereof shall commence with the Trustee.

## ARTICLE 3. INSPECTION AND DELIVERY

3.1. Place of Delivery. Trinity will deliver the Equipment to the Trustee at the place or places speci-

fied in Annex B hereto (or if Annex B does not specify a place or places, at the place or places designated from time to time by the Trustee), freight charges and storage charges, if any, prepaid, in accordance with the delivery schedule set forth in Annex B hereto; provided, however, that Trinity shall not have any obligation to deliver any unit of Equipment hereunder subsequent to the commencement of any proceedings specified in clause (c) or (d) of Section 16.1 hereof or subsequent to the occurrence of any event of default as described in Section 16.1 hereof or of any event which with the giving of notice or lapse of time or both would constitute such an event of default. Trinity agrees not to deliver any unit of Equipment hereunder (a) following receipt of written notice from the Trustee or the Agent of the commencement of any such proceedings or the occurrence of any such event, as aforesaid, (b) until it receives notice from the Agent, the Trustee or their counsel on their behalf, that the respective conditions contained in Articles VII and VIII of the Participation Agreement have been met, or (c) following receipt of written notice from the Agent or the Trustee of the Agent's or the Trustee's determination that there has been a materially adverse change in the condition, financial, or otherwise, of the Lessee from that which existed on December 31, 1980.

3.2. Force Majeure. The obligations of Trinity as to time of delivery are subject to delays resulting from causes beyond Trinity's reasonable control, including but not limited to acts of God, acts of government such as embargoes, priorities and allocations, war or war conditions, riots or civil commotion, sabotage, strikes, differences with workmen, accidents, fires, floods, explosions, damage to plant, equipment or facilities, delays in receiving necessary materials, delays of carriers or subcontractors.

3.3. Exclusion of Equipment. Notwithstanding the provisions of Section 3.2 hereof, any unit of Equipment not delivered to the Trustee pursuant to Section 3.1 hereof and any unit of Equipment not delivered and accepted by the Trustee hereunder on or before June 30, 1981, shall be excluded from this Agreement, and the Trustee shall be relieved of its obligations hereunder to purchase and pay for such Equipment. If any unit of Equipment shall be so excluded, the parties hereto shall execute an agreement supplemental hereto limiting this Agreement to the units of

Equipment not so excluded herefrom. In the event of any such exclusion of any unit of Equipment herefrom pursuant to the foregoing provisions or pursuant to Section 4.1 hereof, or in the event the Trustee is relieved of its obligations hereunder to accept or pay for any or all units of Equipment in accordance with the terms and conditions hereof for any reason whatsoever, the Lessee will be obligated pursuant to Article I of the Participation Agreement to accept all such units completed and delivered by Trinity and to pay the full purchase price therefor when due, all in accordance with the terms of its prior contractual arrangements with Trinity relating to the Equipment (the "Purchase Order"), and the Trustee will reassign, transfer and set over to Trinity and the Lessee, as their respective interests shall appear, all the right, title and interest of the Trustee in and to the units so excluded and the Purchase Order to the extent relating thereto. The Trustee agrees, upon any such exclusion, to take such steps including the execution of instruments of transfer, as may be reasonably requested by the Lessee for the purpose of acknowledging and perfecting the interest of the Lessee in any unit of equipment so excluded from this Agreement.

3.4. Inspection. During construction, the Equipment shall be subject to inspection and approval by the authorized inspectors of the Trustee (who may be employees and agents of the Lessee), and Trinity shall grant to such authorized inspectors reasonable access to the plant at which the units of Equipment are being constructed. Prior to delivery to the Trustee by Trinity, each unit of Equipment shall be presented to an authorized inspector of the Trustee for inspection at the place specified for delivery of such unit, and if such unit conforms to the Specifications, requirements and standards applicable thereto, such authorized inspector shall execute and deliver to Trinity a certificate of acceptance ("Certificate of Acceptance") stating that such unit has been inspected and accepted on behalf of the Trustee and is marked in accordance with Article 10 hereof; provided, however, that Trinity shall not thereby be relieved of its warranties referred to in Articles 2 and 14 hereof. By § 2 of the Lease and by this Section 3.4, the Trustee hereby appoints the Lessee its agent to inspect and accept delivery of the Equipment. Acceptance of any unit of Equipment by the Lessee (or its employees or agents, as aforesaid) pursuant to § 2 of the Lease shall be deemed to be acceptance of such unit hereunder by the Trustee.

3.5. Trinity's Responsibilities After Delivery.

Upon delivery to and acceptance by the Trustee of units of Equipment at the place specified for delivery, Trinity shall have no further responsibility for nor bear any risk of any damage to or the destruction or loss of any such unit; provided, however, that Trinity shall not thereby be relieved of its warranties referred to in Articles 2 and 14 hereof.

ARTICLE 4. PURCHASE PRICE AND PAYMENT

4.1. The base price or prices per unit of the Equipment are set forth in Annex B hereto. Such base price or prices are subject to such increase or decrease as is agreed to by Trinity, the Trustee and the Lessee. The term "Purchase Price" as used herein shall mean the base price or prices as so increased or decreased and as set forth in Trinity's invoice or invoices delivered to the Trustee and, if the Purchase Price is other than the base price or prices set forth in Annex B, the invoice or invoices shall be accompanied by, or have endorsed thereon, the agreement or approval of the Lessee and the Trustee (such invoice or invoices being hereinafter called the Invoices). If on any Closing Date (as hereinafter defined in this Article) the aggregate Purchase Price of Equipment for which settlement has theretofore been and is then being made under this Agreement would, but for the provisions of this sentence, exceed the Maximum Purchase Price specified in Item 4 of Annex A hereto (or such higher amount as the Trustee may at its option agree to prior to delivery of any unit or units of Equipment that, but for such agreement, would be excluded from this Agreement), Trinity (and any assignee of Trinity) and the Trustee will enter into an agreement excluding from this Agreement such unit or units of Equipment then proposed to be settled for in inverse order of their delivery pursuant to Article 3 hereof, as will, after giving effect to such exclusion, reduce such aggregate Purchase Price under this Agreement to not more than the Maximum Purchase Price specified in Item 4 of Annex A hereto (or such higher amount as aforesaid), and the Trustee shall take such other steps, including the execution of instruments of transfer, as it may be reasonably requested by the Lessee for the purpose of acknowledging and perfecting the interest of the Lessee in any unit of Equipment so excluded from this Agreement, and the Trustee shall have no further obligation or liability in respect of units so excluded.

4.2. Settlement and Closing Dates. The Equipment shall be settled for in such number of groups of units of Equipment delivered to and accepted by the Trustee as is provided in Item 1 of Annex A hereto. The term "Closing Date" with respect to any group of units shall be such date as is specified by the Lessee in accordance with Item 1 of Annex A hereto by six business days' written notice thereof with the concurrence of the Trustee and the Agent, but in no event shall such Closing Date be later than June 30, 1981. Such notice shall specify the aggregate Purchase Price of the Equipment to be settled for and a copy thereof shall be sent by the Lessee to the Agent and the Trustee. The place of each closing shall be determined by mutual agreement among the parties hereto. At least five business days prior to any Closing Date, Trinity shall present the Invoice to the Trustee and the Lessee for the Equipment to be settled for. The term "business day" as used herein means any calendar day, excluding Saturdays, Sundays and any other day on which banking institutions in Chicago, Illinois, or Dallas, Texas, are authorized or obligated to remain closed.

4.3. Indebtedness of Trustee to Vendor. Subject to the terms of this Agreement and the satisfaction of the conditions set forth in the Participation Agreement, the Trustee hereby acknowledges itself to be indebted to the Vendor in the amount of the aggregate Purchase Price of the Equipment to be settled for and hereby promises to pay the same in cash or immediately available funds to the Vendor at such place as the Vendor may designate, as follows:

(a) on each Closing Date, an amount equal to 31.542065% of the aggregate Purchase Price of the Equipment for which settlement is being made; and

(b) in 29 semiannual installments, as hereinafter provided, an amount equal to the aggregate Purchase Price of the Equipment for which settlement is being made less the aggregate amount paid or payable with respect thereto pursuant to subsection (a) of this Section (said portion of the aggregate Purchase Price payable in installments called "CSA Indebtedness").

4.4. CSA Indebtedness; Payment Dates; Interest.  
(a) The installments of the CSA Indebtedness shall be payable semiannually on January 2 and July 2 in each year, commencing on January 2, 1982 (each such date a "Payment Date").

The unpaid balance of the CSA Indebtedness shall bear interest from the Closing Date in respect of which such indebtedness was incurred at the rate of 14% per annum, except that until each Take-Out Date (as defined in the Participation Agreement), the Interim Investor's interest in the CSA indebtedness ("Interim Investor's Interest") to be acquired on such Take-Out Date by the Take-Out Investor (as defined in the Participation Agreement) shall bear interest at the Interim Rate (as hereinafter defined). Interest on the unpaid balance of the CSA Indebtedness shall be payable to the extent accrued on July 2, 1981, and semiannually on each Payment Date thereafter, and in the case of the Interim Investor, interest on the unpaid balance of the Interim Investor's Interest shall also be payable to the extent accrued on September 15, 1981. The amounts of principal of and interest on the CSA Indebtedness payable on each Payment Date shall be calculated to be substantially in proportion to the amount and allocation of principal and interest on such Payment Date set forth in Schedule I hereto (subject to the provisions of Article 7 hereof) and the aggregate of such installments of principal and interest shall completely amortize the CSA Indebtedness at maturity. The Trustee will furnish to the Vendor and the Lessee a schedule showing the respective amounts of principal and interest payable on each Payment Date promptly after the last Closing Date, in such number of counterparts as shall be requested by the Vendor. The term "Interim Rate" shall mean the higher of (x) 1.5% over the three-month Certificate of Deposit rate as published in the Wall Street Journal on the Interim Investor's first Deposit Date under the Participation Agreement and (y) 1.5% over the three-month Certificate of Deposit rate as published in the Wall Street Journal on the Interim Investor's second Deposit Date under the Participation Agreement.

(b) If any of the dates for payment of principal or interest is not a business day, such payment shall be payable on the succeeding business day, and no interest shall be payable for the period from and after the nominal date for payment thereof to such next succeeding business day.

4.5. Calculation of Interest. Interest under this Agreement shall be calculated on the basis of a 360-day year of 12 30-day months, except that the interest accrued to July 2, 1981, and interest in respect of the



Interim Investor's Interest accrued to September 15, 1981, shall be calculated on an actual days elapsed, 365-day year basis.

4.6. Penalty Interest. The Trustee will pay interest, to the extent legally enforceable, at the rate of 15% per annum and at the rate of 1% per annum over the Interim Rate for the Interim Investor's Interest ("Penalty Rate") upon all amounts remaining unpaid on the CSA Indebtedness after the same shall have become due and payable pursuant to the terms hereof or such lesser amount as shall be legally enforceable, anything herein to the contrary notwithstanding.

4.7. Currency of Payment. All payments provided for in this Agreement shall be made by bank wire transfer of Federal funds in such coin or currency of the United States as at the time of payment shall be legal tender for the payment of public and private debts. Except as provided in Articles 7 and 16 hereof, the Trustee shall not have the privilege of prepaying any portion of the CSA Indebtedness prior to the date on which it becomes due.

4.8. Liability of Trustee Limited to "Income and Proceeds from Equipment". Notwithstanding any other provision of this Agreement (including but not limited to any provision of Articles 16 and 17 hereof, except as set forth in this Section 4.8), but not limiting the effect of Article 22 hereof, the liability of the Trustee or any assignee of the Trustee for any and all payments to be made by it under this Agreement, with the exception only of the payments to be made pursuant to Section 4.3(a) hereof and the payment of interest on the Interim Investor's Interest on September 15, 1981, pursuant to Section 4.4(a) hereof (which shall be made by the Trustee solely from funds provided to the Trustee by the Owner for the purpose of enabling the Trustee to make such payments) and the proviso to Section 13.3 hereof, shall not exceed an amount equal to and shall be payable only out of the "income and proceeds from the Equipment", and such payments shall be made by the Trustee only to the extent that the Trustee or any assignee of the Trustee shall have actually received sufficient "income and proceeds from the Equipment" to make such payments. Except as provided in the preceding sentence, the Trustee shall have no liability to make any payments under this Agreement whatsoever except from the "income and proceeds from the Equipment" to the extent actually received by the Trustee or any assignee of

the Trustee. As used herein the term "income and proceeds from the Equipment" shall mean:

(i) if one of the events of default specified in Section 16.1 hereof shall have occurred and while it shall be continuing, so much of the following amounts as are indefeasibly received by the Trustee or any assignee of the Trustee at any time after any such event and during the continuance thereof: (a) all amounts of rental and amounts in respect of a Casualty Occurrence (as defined in § 7 of the Lease) paid for or with respect to the Equipment pursuant to the Lease and any and all other payments received under § 13 or any other provision of the Lease (except any indemnity paid or payable to the Trustee or the Owner pursuant to §§ 6 and 9.5 of the Lease and under the Indemnity Agreement (as defined in the Participation Agreement)) and (b) any and all payments or proceeds received for or with respect to the Equipment as the result of the sale, lease or other disposition thereof, after deducting all costs and expenses of such sale, lease or other disposition; and

(ii) at any other time only that portion of the amounts referred to in clauses (a) and (b) of subsection (i) above (not including amounts paid by the Lessee to the Trustee as reimbursement of sums paid by the Trustee on account of prior defaults under § 10 of the Lease) as are indefeasibly received by the Trustee or any assignee of the Trustee and as shall equal the portion of the CSA Indebtedness (including prepayments thereof required in respect of a Casualty Occurrence) and/or interest thereon due and payable on the date such amounts were required to be paid pursuant to the Lease or as shall equal any other payments then due and payable under this Agreement;

it being understood that "income and proceeds from the Equipment" shall in no event include amounts referred to in the foregoing clauses (a) and (b) which were received by the Trustee or any assignee of the Trustee prior to the existence of such an event of default which exceeded the amounts required to discharge that portion of the CSA Indebtedness (including prepayments thereof required in respect of a Casualty Occurrence) and/or interest thereon due and payable on the date on which amounts with respect thereto received by the Trustee or any assignee of the Trustee were required to be paid to it pursuant to the Lease or which exceeded any other payments due and payable

under this Agreement at the time such amounts were payable under the Lease. Nothing contained herein limiting the liability of the Trustee shall derogate from the right of the Vendor to proceed against the Equipment as provided for herein for the full unpaid Purchase Price of the Equipment and interest thereon and all other payments and obligations hereunder. Notwithstanding anything to the contrary contained in Article 16 or 17 hereof, the Vendor agrees that in the event it shall obtain a judgment against the Trustee for an amount in excess of the amounts payable by the Trustee pursuant to the limitations set forth in this Section, it will, accordingly, limit its execution of such judgment to amounts payable pursuant to the limitations set forth or referred to in this Section.

#### ARTICLE 5. SECURITY INTEREST IN EQUIPMENT

5.1. Vendor To Retain Security Interest; Accessions Are Part of Equipment. The Vendor hereby retains a security interest in the Equipment until the Trustee shall have made all its payments under this Agreement and shall have kept and performed all its agreements herein contained, notwithstanding any provision of this Agreement limiting the liability of the Trustee and notwithstanding the delivery of the Equipment to and the possession and use thereof by the Trustee and the Lessee as provided in this Agreement and the Lease. Any and all parts installed on and additions and replacements made to any unit of Equipment (i) which are not readily removable without causing material damage to such unit, (ii) the cost of which is included in the Purchase Price of such unit, (iii) in the course of ordinary maintenance of the Units, or (iv) which are required for the operation or use of such unit in railroad interchange by the Applicable Laws (as defined in § 10.1 of the Lease) shall constitute accessions to the Equipment and shall be subject to all the terms and conditions of this Agreement and included in the term "Equipment" as used herein.

5.2. Obligations upon Payment of CSA Indebtedness. Except as otherwise specifically provided in Article 7 hereof, when and only when the Vendor shall have been paid the full indebtedness in respect of the Purchase Price of the Equipment, together with interest and all other payments as herein provided, absolute right to the possession of, title to and property in the Equipment shall pass to and vest in the Trustee without further transfer or action on the part of the Vendor, except that

the Vendor, if requested by the Trustee at that time, will (a) execute an instrument releasing its security interest in the Equipment and transferring such interest to the Trustee or upon its order, free of all liens, security interests and other encumbrances created or retained hereby and deliver such instrument to the Trustee at its address referred to in Article 21 hereof, (b) execute and deliver at the same place, for filing in all necessary public offices, such instrument or instruments in writing as may be necessary or appropriate in order then to make clear upon the public records the title of the Trustee to the Equipment and (c) pay to the Trustee any money paid to the Vendor pursuant to Article 7 hereof and not theretofore applied as provided therein. The Trustee hereby waives and releases any and all rights existing or that may be acquired in or to the payment of any penalty, forfeit or damages for failure to execute and deliver such instrument or instruments or to file any certificate of payment in compliance with any law or statute requiring the filing of the same, except for failure to execute and deliver such instrument or instruments or to file such certificate within a reasonable time after written demand by the Trustee.

#### ARTICLE 6. TAXES

6.1. General Tax Indemnification. Whether or not any of the transactions contemplated hereby are consummated, the Trustee agrees to pay and to indemnify and hold the Vendor harmless from all Taxes (as defined in § 6 of the Lease) for which indemnification is required under the Lease; excluding, however, (i) Taxes measured solely by net income based upon the Vendor's receipt of payments provided for herein (other than payments due the Vendor under this Article 6 except those for which the Vendor is entitled to a corresponding deduction in the calculation of its net income) and franchise and value added taxes which are in lieu of such net income taxes; and (ii) any Taxes imposed on or measured by any fees or compensation received by the Vendor; provided, however, that the Trustee shall not be required to pay any Taxes during the period it may be contesting the same in the manner provided in Section 6.2 hereof.

6.2. Claims; Contests; Refunds. If claim is made against the Vendor for any Taxes indemnified against under this Article 6, the Vendor shall promptly notify the

Trustee. If reasonably requested by the Trustee in writing, the Vendor shall, upon receipt of any indemnity satisfactory to it for all costs, expenses, losses, legal and accountants' fees and disbursements, penalties, fines, additions to tax and interest, and at the expense of the Trustee, contest in good faith the validity, applicability or amount of such Taxes by (a) resisting payment thereof if possible, (b) not paying the same except under protest, if protest is necessary and proper, and (c) if payment is made, using reasonable efforts to obtain a refund thereof in appropriate administrative or judicial proceedings or both. The Trustee may also contest, at its own expense, the validity, applicability or amount of such Taxes in the name of the Vendor; provided that no proceeding or action relating to such contest shall be commenced (nor shall any pleading, motion, brief or other paper be submitted or filed in the name of the Vendor in any such proceeding or action) without the prior written consent of the Vendor, which consent shall not be unreasonably withheld. If the Vendor shall obtain a refund of all or any part of such Taxes previously reimbursed by the Trustee in connection with any such contest or an amount representing interest thereon, the Vendor shall pay the Trustee the amount of such refund or interest net of expenses; provided, however, that no event of default set forth in Section 16.1 hereof and no event which with notice or lapse of time or both would constitute such an event of default shall have occurred and be continuing.

6.3. Reports or Returns. In case any report or return is required to be made with respect to any obligation of the Trustee under or arising out of this Article 6, the Trustee shall either make such report or return in such manner as will show the interests of the Vendor in the Equipment or shall promptly notify the Vendor of such requirement and shall make such report or return in such manner as shall be satisfactory to the Vendor. All costs and expenses (including legal and accountants' fees) of preparing any such return or report shall be borne by the Trustee.

6.4. Survival. All of the obligations of the Trustee under this Article 6 shall survive and continue, notwithstanding payment in full of all other amounts due under this Agreement.

ARTICLE 7. MAINTENANCE; TERMINATION AND CASUALTY  
OCCURRENCES

7.1. Maintenance. The Trustee shall, at its own cost and expense, maintain and keep each unit of the Equipment in good operating order and repair, ordinary wear and tear excepted, and eligible for railroad interchange in accordance with the Applicable Laws (as defined in § 9 of the Lease) and in the same condition as other similar equipment owned or leased by the Lessee.

7.2. Termination; Casualty Occurrences. In the event that the Lease is terminated pursuant to § 7.7 of the Lease (a "Termination"), or any unit of Equipment shall suffer a Casualty Occurrence (as defined in § 7 of the Lease), the Trustee shall, promptly after it shall have received notice from the Lessee or has otherwise been informed of a Termination or that such unit has suffered a Casualty Occurrence, cause the Vendor to be fully informed in regard thereto by written notice; provided that, in the case of a Termination, the Trustee shall give such written notice to the Vendor no less than 30 days prior to the Settlement Date, as hereinafter defined. On the next succeeding date for the payment of an installment on the CSA Indebtedness (or, in the event such date will occur within 10 days of the delivery of notice, on the following payment date) after such notice from the Lessee has been received or on the Termination Date (as defined in § 7.7 of the Lease) in the case of a Termination (each such date hereinafter called a "Settlement Date"), the Trustee shall, subject to the limitations contained in Section 4.8 hereof, pay to the Vendor (i) in the case of a Casualty Occurrence, a sum equal to the Casualty Value (as defined in Section 7.3 hereof) of such unit suffering a Casualty Occurrence as of such Settlement Date, together with an amount equal to accrued interest thereon and (ii) in the case of a Termination a sum equal to the Termination Value (as defined in Section 7.4 hereof) of all units subject to the Lease as of such Settlement Date, together with an amount equal to accrued interest thereon (as hereinafter provided). The Trustee shall file, or cause to be filed, with the Vendor a certificate setting forth the Casualty Value of such unit or the Termination Value of all units subject to the Lease, as the case may be. Any money paid to the Vendor pursuant to this paragraph shall be applied (after the payment of principal and interest due on such date in respect of CSA Indebtedness not being prepaid) to prepay,

without penalty or premium except in the case of a Termination, ratably in accordance with the unpaid balance of each installment, the CSA Indebtedness, together with all interest accrued on the portion of the CSA Indebtedness being prepaid. The Trustee shall promptly cause to be furnished to the Vendor and the Lessee a revised schedule of payments of principal and interest thereafter to be made, in such number of counterparts as the Vendor and the Lessee may request, calculated as provided in Section 4.4 hereof.

7.3. Casualty Value. The Casualty Value of each unit of the Equipment suffering a Casualty Occurrence shall be deemed to be that portion of the original Purchase Price remaining unpaid on the date as of which such Casualty Value shall be determined (without giving effect to any prepayment or prepayments theretofore made under this Article with respect to any other unit). For the purpose of this paragraph and Paragraph 7.4 hereof, each payment of the Purchase Price made pursuant to Article 4 hereof shall be deemed to be a payment with respect to each unit of Equipment in like proportion as the original Purchase Price of such unit bears to the aggregate original Purchase Price of all the Equipment.

7.4. Termination Value. The Termination Value of all units subject to the Lease shall be the sum of (a) the Casualty Values thereof and accrued interest thereon, if any, plus (b) a prepayment premium equal to the product of the multiplication of such Casualty Value by the applicable percentage set forth below (the "Prepayment Premium"):

<u>Settlement Date</u>	<u>Percentage</u>
1/2/89	7%
7/2/89	6.5%
1/2/90	6.0%
7/2/90	5.5%
1/2/91	5.0%
7/2/91	4.5%
1/2/92	4.0%
7/2/92	3.5%
1/2/93	3.0%
7/2/93	2.5%
1/2/94	2.0%
7/2/94	1.5%
1/2/95	1.0%
7/2/95	.5%
1/2/96	0%

7.5. Obligations upon Payment of Casualty or Termination Value. Upon payment by the Trustee to the Vendor of the Casualty Value or Termination Value of any unit of the Equipment having suffered a Casualty Occurrence or having been subject to termination, as the case may be, absolute right to the possession of, title to and property in such unit shall pass to and vest in the Trustee, without further transfer or action on the part of the Vendor, except that the Vendor, if requested by the Trustee, will execute and deliver to the Trustee, at the expense of the Trustee, an appropriate instrument confirming such passage to the Trustee of all the Vendor's right, title and interest, and the release of the Vendor's security interest, in such unit, in recordable form, in order that the Trustee may make clear upon the public records the title of the Trustee to such unit.

#### ARTICLE 8. INSURANCE; CONDEMNATION

If the Vendor shall receive any insurance proceeds or condemnation payments in respect of any unit suffering a Casualty Occurrence, the Vendor shall forthwith pay such insurance proceeds or condemnation payments to the Trustee after receipt by the Vendor of the Casualty Value of such Unit, together with accrued interest thereon, unless an event of default shall have occurred and be continuing hereunder. All insurance proceeds received by the Vendor in respect of any unit of Equipment not suffering a Casualty Occurrence shall be forthwith paid to the Trustee upon proof reasonably satisfactory to the Vendor that any damage to such unit in respect of which such proceeds were paid has been fully repaired, provided that an event of default shall not have occurred and be continuing.

#### ARTICLE 9. REPORTS AND INSPECTIONS

On or before April 30 in each year, commencing with April 30, 1982, the Trustee shall cause to be furnished to the Vendor an accurate statement to the effect set forth in § 8 of the Lease. The Vendor shall have the right, by its agents, to inspect the Equipment and the Trustee's and the Lessee's records with respect thereto at such reasonable times as the Vendor may request during the term of this Agreement.



#### ARTICLE 10. MARKING OF EQUIPMENT

The Trustee will cause each unit of Equipment to be kept numbered and marked as provided in § 5 of the Lease. The Trustee will not permit the identifying number of any unit of the Equipment to be changed except in accordance with a statement of new number or numbers to be substituted therefor which previously shall have been filed with the Vendor and filed by or on behalf of the Trustee in all public offices where this Agreement shall have been filed. Except as aforesaid, the Trustee will not allow the name of any person, association or corporation to be placed on any unit of Equipment as a designation that might be interpreted as a claim of ownership; provided, however, that the Equipment may be lettered with the names or initials or other insignia customarily used by the Lessee, its subsidiaries and affiliated companies, and provided, further, that Lessee may make any change in the lettering of the names, trademarks, initials or other insignia at any time and as often as it deems it appropriate to do so.

#### ARTICLE 11. COMPLIANCE WITH LAWS

During the term of this Agreement, the Trustee will comply, and will cause every lessee or user of the Equipment to comply, in all respects (including without limitation the use, maintenance and operation of the Equipment) with all Applicable Laws (as defined in § 9 of the Lease to the extent that such laws and rules affect the title, operation or use of the Equipment) and in the event the Applicable Laws require any alteration, replacement or addition of or to any part on any unit of Equipment, the Trustee will or will cause any lessee to conform therewith at no expense to the Vendor; provided, however, that the Trustee or any lessee may, in good faith, contest the validity or application of any Applicable Law in any reasonable manner which does not, in the opinion of the Vendor, materially and adversely affect the property or rights of the Vendor under this Agreement.

#### ARTICLE 12. POSSESSION AND USE

12.1. Possession and Use of Equipment by Trustee. So long as an event of default shall not have occurred and be continuing under this Agreement, the Trustee shall be entitled to the possession of the Equipment and the use thereof (as provided in the Lease) from

and after delivery of the Equipment by Trinity to the Trustee, but only upon and subject to all the terms and conditions of this Agreement.

12.2. Lease Permitted; Lease Subordinate; No Amendment or Termination. The Trustee simultaneously is leasing the Equipment to the Lessee as provided in the Lease, and the rights of the Lessee and its permitted assigns under the Lease shall be subordinated and junior in rank to the rights and shall be subject to the remedies of the Vendor under this Agreement. The Lease shall not be amended in any respect or terminated (except in accordance with its terms) without the prior written consent of the Vendor prior to the payment in full of the CSA Indebtedness, together with all other sums due to the Vendor hereunder.

#### ARTICLE 13. PROHIBITION AGAINST LIENS

13.1. Trustee To Discharge Liens. The Trustee will pay or discharge any and all sums claimed by any party from, through or under the Trustee or its successors or assigns which, if unpaid, might become a lien, charge or security interest on or with respect to the Equipment or any unit thereof or the Lease or the income and proceeds from the Equipment or the Lease and will promptly discharge any such lien, charge or security interest which arises, but shall not be required to pay or discharge any such claim so long as the validity thereof shall be contested in good faith and by appropriate legal proceedings in any reasonable manner and the nonpayment thereof does not, in the opinion of the Vendor, materially and adversely affect the security interest of the Vendor in or to the Equipment, its interest in the income and proceeds from the Equipment or otherwise under this Agreement. Any amounts paid by the Vendor in discharge of liens, charges or security interests upon the Equipment or the income and proceeds from the Equipment shall be secured by and under this Agreement.

13.2. No Breach for Certain Liens. The covenant set forth in paragraph 13.1 will not be deemed breached by reason of liens for taxes, assessments or governmental charges or levies, in each case not due and delinquent, or undetermined or inchoate materialmen's, mechanics', workmen's, repairmen's or other like liens arising in the ordinary course of business and, in each case not delinquent, liens or claims arising hereunder or under the Participation Agreement and the documents contemplated thereby or from the Vendor's acts or out of judgments under appeal and with execution thereon stayed.

13.3. Article 13 Subject to Article 22 Except in Certain Instances. The obligations of the Trustee under this Article 13 are subject to the limitations contained in Article 22 hereof; provided, however, that the Trustee will pay or discharge any and all taxes, claims, liens, charges or security interests claimed from, through or under the Trustee, its successors and assigns other than the Agent or any successor trustee under the Trust Agreement which result from claims not related to the ownership of the Equipment or the administration of the Trust Estate or any other transaction contemplated by this CSA or its Documents (as defined in the Participation Agreement), and, to the extent it receives funds sufficient for such purpose from the Owner, from, through or under the Owner and its successors and assigns (and also, to the extent that it receives funds sufficient for such purpose from the Owner, including taxes arising out of the receipt of rentals and other payments under the Lease and any other proceeds from the Equipment), which, if unpaid, might become a lien, charge or security interest on or with respect to the Equipment or the Trustee's interest in the Lease and the payments to be made thereunder, but the Trustee shall not be required to pay or discharge any such tax, claim, lien, charge or security interest so long as the validity thereof shall be contested in good faith and by appropriate legal proceedings in any reasonable manner and the nonpayment thereof does not in the reasonable opinion of the Vendor adversely affect the security interest of the Vendor in the Equipment, the Lease, its interest in the income and proceeds from the Equipment or the Lease, or otherwise under this Agreement.

#### ARTICLE 14. INDEMNITIES AND WARRANTIES

14.1. Indemnification. The Trustee shall pay and shall protect, indemnify and hold harmless the Vendor, its successors, assigns, agents and servants ("Indemnified Persons"), from and against any and all Indemnified Matters (as defined in § 9.5 of the Lease), except that the Trustee shall not be liable to Trinity in respect of any Indemnified Matter to the extent liability in respect thereof arises from an act or omission of Trinity or is covered by Trinity's warranties or patent indemnities referred to in Articles 2 and 14 hereof. The Trustee shall be obligated under this Article 14, whether or not any Indemnified Person shall also be indemnified with respect

to the same matter under any other agreement by any other person, and the Indemnified Person seeking to enforce the indemnification may proceed directly against the Trustee under this Article 14 without first resorting to any such other rights of indemnification. In case any action, suit or proceeding is brought against any Indemnified Person in connection with any Indemnified Matter, the Trustee may and, upon such Indemnified Person's request, will at the Trustee's expense resist and defend such action, suit or proceeding, or cause the same to be resisted or defended by counsel selected by the Trustee and approved by such Indemnified Person and, in the event of any failure by the Trustee to do so, the Trustee shall pay all costs and expenses (including without limitation attorneys' fees and expenses) incurred by such Indemnified Person in connection with such action, suit or proceeding. In the event the Trustee is required to make any payment under this Article 14, the Trustee shall pay such Indemnified Person an amount which, after deduction of all taxes required to be paid by such Indemnified Person in respect of the receipt thereof under the laws of the United States or of any political subdivision thereof (after giving credit for any savings in respect of any such taxes by reason of deductions, credits or allowances in respect of the payment of the expense indemnified against, and of any other such taxes as determined in the sole discretion of the Indemnified Person), shall be equal to the amount of such payment. The Vendor and the Trustee agree to give each other written notice of any claim or liability hereby indemnified against promptly upon obtaining knowledge thereof. Upon the payment in full by the Trustee of any indemnity as contained in this Article 14, and provided that no event of default described in Section 16.1 hereof or other event which with notice or lapse of time or both would constitute such an event of default shall have occurred and be continuing, the Trustee shall be subrogated to any right of such Indemnified Person (except against another Indemnified Person) in respect of such Indemnified Matter. Any payments received by such Indemnified Person from the Lessee as a result of any Indemnified Matter shall be paid over to the Trustee to the extent necessary to reimburse the Trustee for indemnification payments previously made by the Trustee in respect of such Indemnified Matter.

14.2. Survival; No Subrogation. The indemnities contained in this Article 14 shall survive the expiration

or termination of this Agreement with respect to all events, facts, conditions or other circumstances occurring or existing prior to such expiration or termination and are expressly made for the benefit of and shall be enforceable by any Indemnified Person. None of the indemnities in this Article 14 shall be deemed to create any rights of subrogation in any insurer or third party against the Trustee therefor, from or under any Indemnified Person, whether because of any claim paid or defense provided for the benefit thereof or otherwise.

14.3. Trustee Not Released if Equipment Damaged or Lost. The Trustee will bear the responsibility for and risk of any damage to or destruction or loss of each unit of Equipment and shall not be released from its obligations hereunder in any such event.

14.4. Warranties and Patent Indemnities. The agreement of the parties relating to Trinity's warranties of material and workmanship and to patent indemnification is set forth in Items 2 and 3 of Annex A hereto and Article 2 hereof. Such warranties and covenants of patent indemnity shall continue in full force and effect notwithstanding the full payment of all sums due under this Agreement, or the satisfaction, discharge or termination of this Agreement in any manner whatsoever.

14.5. Warranties of Trinity. Trinity represents and warrants to the Trustee that at the time of delivery and acceptance of each unit of Equipment under this Agreement the Trustee will have good and marketable title to such unit, free and clear of all claims, liens, security interests and other encumbrances of any nature except only the rights of the Vendor, the Lessee and the Trustee.

Trinity represents that it is not entering into this Agreement or into any other transaction contemplated by the Participation Agreement directly or indirectly in connection with any arrangement or understanding by it in any way involving any employee benefit plan (other than a governmental plan) with respect to which it or, insofar as is known to it, any party to the Participation Agreement is a party in interest, all within the meaning of the Employee Retirement Income Security Act of 1974.

Trinity hereby represents and warrants to the Trustee and its successors and assigns that this Agreement

has been duly authorized by Trinity and lawfully executed and delivered by it for a valid consideration and that, assuming due authorization, execution and delivery by the Trustee, this Agreement is, insofar as Trinity is concerned, a legal, valid and binding instrument, enforceable against Trinity in accordance with its terms.

#### ARTICLE 15. ASSIGNMENTS

15.1. Assignment by Trustee. The Trustee will not transfer the right to possession of any unit of the Equipment (except pursuant to the Lease) or sell, assign, transfer or otherwise dispose of its rights under this Agreement (except as provided in the Trust Agreement).

15.2. Assignment by Vendor. All or any of the rights, remedies, benefits and advantages of the Vendor under this Agreement, including the right to receive the payments herein provided to be made by the Trustee, may be assigned by the Vendor and reassigned by any assignee at any time or from time to time. No such assignment shall subject any assignee to or relieve Trinity from any of the obligations of Trinity to deliver the Equipment to the Trustee in accordance herewith or to respond to its warranties and indemnities referred to in Articles 2 and 14 hereof, or relieve the Trustee of its obligations to Trinity contained in Articles 3, 4, 6 and 14 hereof, Annex A hereto and this Article 15 or any other obligation which, according to its terms or context, is intended to survive an assignment.

15.3. Notice of Assignment by Vendor. Upon any such assignment pursuant to Section 15.2 hereof, the assignor shall give written notice to the Trustee and the Lessee, together with a copy of such assignment, and such assignee shall, by virtue of such assignment, acquire all the assignor's right, title and interest in and to the Equipment and this Agreement, or in and to a portion thereof, as the case may be, subject only to such reservations as may be contained in such assignment. From and after the receipt by the Trustee of the notification of any such assignment, all payments thereafter to be made by the Trustee under this Agreement shall, to the extent so assigned, be made to the assignee in such manner as it may direct. The Trustee shall have no obligation to any assignee prior to actual receipt by the Trustee of written notice of any such assignment.

15.4. No Setoff Against CSA Indebtedness. The Trustee recognizes that this Agreement will be assigned to the Agent as provided in the CSA Assignment. The Trustee expressly represents, for the purpose of assurance to any person, firm or corporation considering the acquisition of this Agreement or of all or any of the rights of the Vendor hereunder, and for the purpose of inducing such acquisition, that the rights of the Agent to the entire unpaid CSA Indebtedness in respect of the Purchase Price of the Equipment or such part thereof as may be assigned together with interest thereon, as well as any other rights hereunder which may be so assigned, shall not be subject to any defense, setoff, counterclaim or recoupment whatsoever by the Trustee arising out of any breach of any obligation of Trinity with respect to the Equipment or the manufacture, construction, delivery or warranty thereof or with respect to any indemnity herein contained or arising by reason of any other indebtedness or liability at any time owing to the Trustee or the Lessee by Trinity. Any and all such obligations, howsoever arising, shall be and remain enforceable by the Trustee against and only against Trinity, as the case may be.

#### ARTICLE 16. DEFAULTS

16.1. Events of Default; Termination of Lease; Declaration of Default; Acceleration of CSA Indebtedness. In the event that any one or more of the following events of default shall occur and be continuing:

(a) the Trustee shall fail to pay or cause to be paid in full any sum payable by the Trustee when payment thereof shall be due hereunder (irrespective of the provisions of Article 4 or 22 hereof or any other provision of this Agreement limiting the liability of the Trustee) and such default shall continue for 15 days (in the case of nonpayment of interest or principal with respect to the CSA Indebtedness), or 30 days (in the case of nonpayment of any other sum payable by the Trustee hereunder) after the date such payment is due and payable; or

(b) default shall be made in the observance or performance of any other of the conditions and agreements on the part of the Trustee (irrespective of the provisions of Article 4 or 22 hereof or any

other provision of this Agreement limiting the liability of the Trustee) or the Lessee contained in the Participation Agreement, the CSA Assignment, the Lease Assignment or the Consent and such default shall continue for 30 days after the earlier of (i) written notice from the Vendor to the Trustee and the Lessee specifying the default and demanding that the same be remedied unless, at the end of such 30-day period, and thereafter for so long as the Trustee and the Lessee shall in good faith be diligently proceeding to cure such default and unless the Vendor shall determine that the resulting delay does not materially affect its rights and (ii) the date on which such default shall first become known to any trust officer of the Trustee (the term "known to any trust officer of the Trustee" shall mean actual knowledge by an officer or employee in the corporate trust department of the Trustee); or

(c) a petition for reorganization under Title 11 of the United States Code, as now constituted or as hereafter amended, shall be filed by or against the Lessee and, unless such petition shall have been dismissed, nullified, stayed or otherwise rendered ineffective (but then only so long as such stay shall continue in force or such ineffectiveness shall continue), all the obligations of the Lessee under the Lease and the Consent shall not have been and shall not continue to be duly assumed in writing within 60 days after such petition shall have been filed, pursuant to a court order or decree, by a trustee or trustees appointed (whether or not subject to ratification) in such proceedings in such manner that such obligations shall have the same status as expenses of administration and obligations incurred by such trustee or trustees; or

(d) any other proceeding shall be commenced by or against the Trustee (in its capacity as Trustee under the Trust Agreement), the Owner or the Lessee for any relief which includes or might result in any modification of the obligations of the Trustee hereunder, the Owner under the Trust Agreement or the Lessee under the Lease or under the Consent under any bankruptcy or insolvency laws or laws relating to the relief of debtors, readjustment of indebtedness,



reorganizations, arrangements, compositions or extensions (other than a law which does not permit any readjustment of such obligations), and, unless such proceedings shall have been dismissed, nullified, stayed or otherwise rendered ineffective (but then only so long as such stay shall continue in force or such ineffectiveness shall continue), all such obligations shall not have been and shall not continue to be duly assumed in writing within 60 days after such proceedings shall have been commenced, pursuant to a court order or decree, by a trustee or trustees or receiver or receivers appointed (whether or not subject to ratification) for the Trustee, the Owner or the Lessee, as the case may be, or for their respective property in connection with any such proceedings in such manner that such obligations shall have the same status as expenses of administration and obligations incurred by such trustee or trustees or receiver or receivers; or

(e) any Event of Default under and as defined in the Lease unless the Trustee shall have cured the corresponding event of default hereunder within three days after notice to the Trustee of such event of default;

then at any time after the occurrence of such an event of default the Vendor may, upon written notice to the Trustee and the Lessee, and upon compliance with any legal requirements then in force and applicable to such action by the Vendor, (i) cause the term of the Lease immediately upon such notice to terminate; provided, however, that such termination shall not be in derogation of or impair the rights of the Trustee or the Agent (under the assignment thereof), as the case may be, to enforce compliance by the Lessee with any of its covenants and agreements under the Lease or to enforce any of its rights and remedies under § 10 of the Lease (subject to the Agent's rights to repossess and sell the Equipment as provided in this Agreement), including the rights of the Trustee or the Agent (under the assignment thereof), as the case may be, to sue for and recover damages provided for in § 10 of the Lease upon the occurrence of an Event of Default under the Lease, and/or (ii) declare ("Declaration of Default") the entire unpaid CSA Indebtedness, together with the interest thereon then accrued and unpaid, immediately due and payable, without further demand, and thereafter the aggregate of the unpaid balance of such indebtedness and

interest shall bear interest from the date of such Declaration of Default at the Penalty Rate to the extent legally enforceable. Upon a Declaration of Default, subject to Article 4 hereof, the Vendor shall be entitled to recover judgment for the entire unpaid balance of the CSA Indebtedness so payable, with interest as aforesaid, and to collect such judgment out of any property of the Trustee wherever situated, subject to the provisions of Articles 4 and 22 hereof. The Trustee shall promptly notify the Vendor and the Lessee of any event of which it has knowledge which constituted, constitutes, or with the giving of notice or lapse of time or both would constitute an event of default under this Agreement.

Notwithstanding anything hereinabove to the contrary, the Vendor will not make any Declaration of Default or cause the Lease to terminate unless it shall have given not less than 15 days' prior notice to the Trustee of its intention so to do. During such period the Trustee may prepay all but not less than all of the outstanding CSA Indebtedness together with accrued interest.

16.2. Waiver of Defaults. The Vendor may, at its election, waive any such event of default and its consequences and rescind and annul any Declaration of Default or notice of termination of the Lease by notice to the Trustee and the Lessee in writing to that effect, and thereupon the respective rights of the parties shall be as they would have been if no such event of default had occurred and no Declaration of Default or notice of termination of the Lease had been made or given. Notwithstanding the provisions of this Section, time is of the essence of this Agreement and no such waiver, rescission or annulment shall extend to or affect any other or subsequent default or impair any rights or remedies consequent thereon.

## ARTICLE 17. REMEDIES

17.1. Vendor May Take Possession of Equipment. At any time during the continuance of a Declaration of Default and upon such further notice, if any, as may be required for compliance with any mandatory legal requirements then in force and applicable to the action to be taken by the Vendor, the Vendor may take or cause to be taken by its agent or agents immediate possession of the Equipment or one or more of the units thereof without

liability to return to the Trustee any sums theretofore paid and free from all claims whatsoever, except as herein-after in this Article 17 expressly provided, and may remove the same from possession and use of the Trustee, the Lessee or any other person and for such purpose may enter upon the premises where the Equipment may be located and may use and employ in connection with such removal any supplies, services and aids and any available trackage and other facilities or means of the Trustee or the Lessee, subject to all mandatory requirements of due process of law.

17.2. Assembling of Equipment for Vendor. In case the Vendor shall demand possession of the Equipment pursuant to this Agreement and shall designate a reasonable point or points from among those provided in § 11.1(a) of the Lease for the delivery of the Equipment, the Trustee shall at its own expense and risk:

(a) forthwith and in the usual manner (including without limitation giving prompt telegraphic and written notice to the Association of American Railroads and all railroads to which any unit or units have been interchanged or which may have possession thereof to return the unit or units) place such units upon such storage tracks as the Vendor reasonably may designate;

(b) cause such units to be stored on such tracks without charge for insurance, rent or storage until all such units of Equipment have been sold, leased or otherwise disposed of by the Vendor; and

(c) cause the same to be transported to any reasonable place as directed by the Vendor.

During any storage period, the Trustee will, at its own cost and expense, insure, maintain and keep each such unit in good order and repair and permit the inspection of the Equipment by the Vendor, the Vendor's representatives and prospective purchasers and users. This agreement to deliver the Equipment and furnish facilities as hereinbefore provided is of the essence of the agreement between the parties, and the Trustee acknowledges that upon application to any court of equity having competent jurisdiction the Vendor shall be entitled to a decree requiring specific performance hereof. The Trustee hereby expressly waives any and all claims against the Vendor and its agent or agents for damages of whatever nature in

connection with any retaking of any unit of Equipment in any commercially reasonable manner.

17.3. Vendor May Dispose of or Retain Equipment.

At any time during the continuance of a Declaration of Default, the Vendor (after retaking possession of the Equipment as provided in Section 17.1 hereof) may, at its election, retain the Equipment in satisfaction of the entire CSA Indebtedness and make such disposition thereof as the Vendor shall deem fit. Written notice of the Vendor's election to retain the Equipment shall be given to the Trustee and the Lessee by telegram or registered mail, addressed as provided in Article 21 hereof, and to any other persons to whom the law may require notice, within 30 days after such Declaration of Default. In the event that the Vendor should elect to retain the Equipment and no objection is made thereto within the 30-day period described in the second proviso below, all the Trustee's rights in the Equipment shall thereupon terminate and all payments made by the Trustee may be retained by the Vendor as compensation for the use of the Equipment; provided, however, that if the Trustee, before the expiration of the 30-day period described in the proviso below, should pay or cause to be paid to the Vendor the total unpaid balance of the CSA Indebtedness, together with interest thereon accrued and unpaid, including penalty interest, and all other payments due under this Agreement, then in such event absolute right to the possession of, title to and property in the Equipment shall pass to and vest in the Trustee; provided, further, that if the Trustee, the Lessee or any other persons notified under the terms of this Section object in writing to the Vendor within 30 days from the receipt of notice of the Vendor's election to retain the Equipment, then the Vendor may not so retain the Equipment, but shall sell, lease or otherwise dispose of it or continue to hold it pending sale, lease or other disposition as hereinafter provided or as may otherwise be permitted by law. If the Vendor shall not have given notice to retain as hereinabove provided or notice of intention to dispose of the Equipment in any other manner, it shall be deemed to have elected to sell the Equipment in accordance with the provisions of this Article 17.

17.4. Vendor May Sell Equipment; Trustee's Right of Redemption. At any time during the continuance of a Declaration of Default, the Vendor, with or without retaking possession thereof, at its election and upon

reasonable notice to the Trustee, the Lessee and any other persons to whom the law may require notice of the time and place, may sell the Equipment or one or more of the units thereof free from any and all claims of the Trustee, the Lessee or any other party claiming from, through or under the Trustee or the Lessee, at law or in equity, at public or private sale and with or without advertisement as the Vendor may determine; provided, however, that if, prior to such sale and prior to the making of a contract for such sale, the Trustee should tender full payment of the total unpaid balance of the CSA Indebtedness, together with interest thereon accrued and unpaid and all other payments due under this Agreement as well as expenses of the Vendor in retaking possession of, removing, storing, holding and preparing the Equipment for and otherwise arranging for the sale and the Vendor's reasonable attorneys' fees, then upon receipt of such payment, expenses and fees by the Vendor, absolute right to the possession of, title to and property in the Equipment shall pass to and vest in the Trustee. The proceeds of such sale or other disposition, less the reasonable attorneys' fees and any other expenses incurred by the Vendor in retaking possession of, removing, storing, holding, preparing for sale and selling or otherwise disposing of the Equipment, shall be credited on the amount due to the Vendor under the provisions of this Agreement.

17.5. Sale of Equipment by Vendor. Any sale hereunder may be held or conducted at such place or places and at such time or times as the Vendor may specify, in one lot or in separate lots and without the necessity of gathering at the place of sale the property to be sold, and in general in such manner as the Vendor may determine, so long as such sale shall be in a commercially reasonable manner. The Vendor, the Trustee or the Lessee may bid for and become the purchaser of the Equipment or any unit thereof so offered for sale. The Trustee and the Lessee shall be given written notice of such sale not less than 10 days prior thereto, by telegram or registered mail addressed as provided in Article 21 hereof. In addition, if such sale shall be a private sale (which shall be deemed to mean only a sale where an advertisement for bids has not been published in a newspaper of general circulation or a sale where less than 40 offerees have been solicited in writing to submit bids), it shall be subject to the rights of the Lessee and the Trustee to purchase or provide a purchaser, within 10 days after notice of the proposed sale price, at the same price offered by the intending purchaser

or a better price. In the event that the Vendor shall be the purchaser of the Equipment, it shall not be accountable to the Trustee or the Lessee (except to the extent of surplus money received as provided in Section 17.7 hereof) and in payment of the purchase price therefor the Vendor shall be entitled to have credited on account thereof all or any part of sums due to the Vendor hereunder.

17.6. Effect of Remedies and Powers and Exercise Thereof. Each and every power and remedy hereby specifically given to the Vendor shall be in addition to every other power and remedy hereby specifically given or now or hereafter existing at law or in equity not inconsistent herewith, and each and every power and remedy may be exercised from time to time and simultaneously and as often and in such order as may be deemed expedient by the Vendor. All such powers and remedies shall be cumulative and the exercise of one shall not be deemed a waiver of the right to exercise any other or others. No delay or omission of the Vendor in the exercise of any such power or remedy and no renewal or extension of any payments due hereunder shall impair any such power or remedy or shall be construed to be a waiver of any default or an acquiescence therein. Any extension of time for payment hereunder or other indulgence duly granted to the Trustee shall not otherwise alter or affect the Vendor's rights or the Trustee's obligations hereunder. The Vendor's acceptance of any payment after it shall have become due hereunder shall not be deemed to alter or affect the Trustee's obligations or the Vendor's rights hereunder with respect to any subsequent payments or default therein.

17.7. Deficiency or Surplus. If there shall remain any amount due to the Vendor under the provisions of this Agreement after applying all sums of money realized by the Vendor under the remedies herein provided, the Trustee shall, subject to the limitations of Section 4.8 hereof and of Article 22 hereof, pay the amount of such deficiency to the Vendor upon demand, together with interest thereon from the date of such demand to the date of payment at the Penalty Rate and, if the Trustee shall fail to pay such deficiency, the Vendor may bring suit therefor and shall be entitled to recover a judgment therefor against the Trustee, provided that the satisfaction of any such judgment shall be limited to the Trust Estate. If there shall remain a surplus in the possession of the Vendor after applying as aforesaid all sums realized

by the Vendor, such surplus shall be paid forthwith to the Trustee.

17.8. Expenses. Subject to the limitations of Section 4.8 and Article 22 hereof, the Trustee will pay all reasonable fees, costs and expenses, including attorneys' fees, incurred by the Vendor in enforcing its remedies under the terms of this Agreement. In the event that the Vendor shall bring any suit to enforce any of its rights hereunder and shall be entitled to judgment, then in such suit the Vendor may recover reasonable expenses, including reasonable attorneys' fees, and the amount thereof shall be included in such judgment.

17.9. Remedies Subject to Mandatory Legal Requirements. The foregoing provisions of this Article 17 are subject in all respects to all mandatory legal requirements at the time in force and applicable thereto.

#### ARTICLE 18. APPLICABLE STATE LAWS

18.1. Conflict with State Laws. Any provision of this Agreement prohibited by any applicable law of any jurisdiction (which is not overridden by applicable Federal law) shall be ineffective as to such jurisdiction without modifying the remaining provisions of this Agreement. Where, however, the conflicting provisions of any such applicable law may be waived, they are hereby waived by the Trustee to the full extent permitted by law, it being the intention of the parties hereto that this Agreement shall be deemed to be a conditional sale and enforced as such.

18.2. Waiver of Notices. Except as otherwise provided in this Agreement, the Trustee, to the full extent permitted by law, hereby waives all statutory or other legal requirements for any notice of any kind, including notice of intention to take possession of or to sell or lease the Equipment or any one or more units thereof, and any other requirements as to the time, place and terms of the sale or lease thereof, any other requirements with respect to the enforcement of the Vendor's rights and any and all rights of redemption.

#### ARTICLE 19. FILING

The Trustee will cause this Agreement, any assign-

ments hereof and any amendments or supplements hereto or thereto to be filed with the Interstate Commerce Commission pursuant to 49 U.S.C. § 11303 and in all other places required by §14 of the Lease; and the Trustee will from time to time perform any other act and will execute, acknowledge, deliver and file any and all further instruments required by law or reasonably requested by the Vendor for the purpose of proper protection, to the satisfaction of counsel for the Vendor, of its interest in the Equipment and its rights under this Agreement or for the purpose of carrying out the intention of this Agreement; and the Trustee will promptly furnish to the Vendor certificates or other evidence of such filing satisfactory to the Vendor.

#### ARTICLE 20. HEADINGS; MODIFICATION OF AGREEMENT

All article and section headings are inserted for convenience only and shall not affect any construction or interpretation of this Agreement.

Except for the Participation Agreement and the Exhibits thereto, this Agreement, including the Annexes hereto, exclusively and completely states the rights of Trinity, the Vendor and the Trustee with respect to the Equipment and supersedes all other agreements, oral or written, with respect to the Equipment. No variation or modification of this Agreement and no waiver of any of its provisions or conditions shall be valid unless in writing and signed by duly authorized representatives of the Vendor and the Trustee. Any reference herein to this Agreement or any other agreement shall mean such agreement and all amendments and supplements hereto or thereto then in effect.

#### ARTICLE 21. NOTICES

Any notice hereunder to any of the parties designated below shall be deemed to be properly served if delivered, telexed or mailed to it by first class mail, postage prepaid, at its chief place of business at the following specified address:

(a) to Trinity, at P. O. Box 10587, Dallas,  
Texas 75207;



(b) to the Trustee, at 130 South La Salle Street, Chicago, Illinois 60603, Attention of Corporate Trust Department, with copies to the Owner at its address set forth in Article 13 of the Participation Agreement;

(c) to the Lessee, at P. O. Box 1219R, Columbia Road and Park Avenue, Morristown, New Jersey 07960, Attention of Assistant Treasurer;

(d) to the Agent, at 135 South La Salle Street, Chicago, Illinois 60690, Attention of Corporate Trust Division;

(e) to any assignee of the Vendor or of the Trustee, at such address as may have been furnished in writing to the Trustee, or the Vendor, as the case may be, by such assignee;

or at such other address as may have been furnished in writing by such party to the other parties to this Agreement.

## ARTICLE 22. IMMUNITIES; SATISFACTION OF UNDERTAKINGS

22.1. No Recourse Against Certain Persons. No recourse shall be had in respect of any contractual obligation due under this Agreement or referred to herein against any incorporator, stockholder, director or officer, as such, past, present or future, of the parties hereto or of the Owner, whether by virtue of any constitutional provision, statute or rule of law or by enforcement of any assessment or penalty or otherwise; all such liability, whether at common law, in equity, by any constitutional provision, statute or otherwise, of such incorporators, stockholders, directors or officers, as such, being forever released as a condition of and as consideration for the execution of this Agreement.

22.2. Satisfaction of Certain Covenants. The obligations of the Trustee under Sections 7.1, 17.2, 17.7 and 17.8 and under Articles 6, 9, 10, 11, 13 (except as set forth in Section 13.3 thereof), 14 and 19 hereof and any and all obligations at any time arising thereunder shall be deemed satisfied in full in all respects by the Lessee's execution and delivery of the Lease. The Trustee

shall not have any responsibility for the Lessee's failure to perform such obligations; but if the same shall not be performed, they shall constitute the basis for an event of default hereunder pursuant to Article 16 hereof. No waiver or amendment of the Lessee's undertakings under the Lease shall be effective unless joined in by the Vendor; provided, however, that the Vendor shall consent to any agreement in writing between the Lessee and the Trustee increasing the rentals or casualty values payable pursuant to § 3 or § 7 of the Lease, such consent to be given by the Vendor within 30 days of delivery of a copy of such agreement to the Vendor.

22.3. No Personal Liability of Trustee. It is expressly understood and agreed by the parties hereto, anything herein to the contrary notwithstanding, that each and all of the representations, warranties, covenants, undertakings and agreements herein made on the part of the financial institution acting as Trustee hereunder are made and intended not as personal representations, warranties, covenants, undertakings and agreements by said institution or for the purpose or with the intention of binding said institution personally but are made and intended for the purpose of binding only the Trust Estate (as such term is used in the Trust Agreement) and this Agreement is executed and delivered by said institution solely in the exercise of the powers expressly conferred upon said institution as trustee under the Trust Agreement; and no personal liability or personal responsibility is assumed by or shall at any time be asserted or enforceable against said institution or the Owner (except as provided in Section 13.3 hereof) on account of this CSA or on account of any representation, warranty, covenant, undertaking or agreement herein of the Trustee (except as aforesaid or in the case of gross negligence or wilful misconduct of the Trustee), either expressed or implied, all such personal liability, if any, being expressly waived and released by the Vendor and by all persons claiming by, through or under the Vendor; provided, however, that the Vendor or any person claiming by, through or under the Vendor making claim hereunder may look to said Trust Estate for satisfaction of the same. Nothing contained in this Section 22.3 shall limit, restrict or impair the rights of the Vendor to take all actions to enforce the rights and remedies provided for herein and to bring suit and obtain a judgment against the Trustee (provided that the Trustee either in its fiduciary or individual capacity shall have no personal liability on

any such judgment and the satisfaction thereof shall be limited to the Trust Estate) or to foreclose the lien and security interest created by this Agreement or otherwise realize upon the Trust Estate, including the right to proceed against the Equipment or the Lessee under the Lease.

22.4. No Amendment to Trust Agreement. The Trustee agrees not to enter into any supplement or amendment of the Trust Agreement except as provided in Section 8.01 thereof as in effect on the date of execution and delivery hereof.

#### ARTICLE 23. GOVERNING LAW

This Agreement shall be governed by and construed in accordance with the laws of the State of Illinois; provided, however, that the parties shall be entitled to all rights conferred by 49 U.S.C. § 11303, such additional rights, if any, arising out of the filing hereof and of any assignment hereof as shall be conferred by the laws of the several jurisdictions in which this Agreement or any assignment hereof may be filed or in which any unit of Equipment shall be located and such rights, if any, arising out of the marking of Equipment.

#### ARTICLE 24. EXECUTION

This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original and all of which together shall constitute a single instrument. Although for convenience this Agreement is dated as of the date first above written, the actual dates of execution hereof by the parties hereto are the dates stated in the acknowledgments hereto annexed.

IN WITNESS WHEREOF, the parties hereto have caused this instrument to be executed by duly authorized officers as of the date first above written.

TRINITY INDUSTRIES, INC.,

[Corporate Seal]

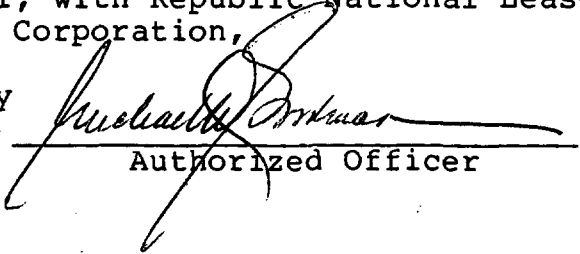
by

Attest:

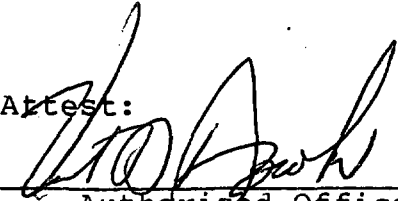
EXCHANGE NATIONAL BANK OF CHICAGO,  
not in its individual capacity but  
solely as trustee under a Trust  
Agreement dated as of March 15,  
1981, with Republic National Leas-  
ing Corporation,

[Seal]

by

  
Authorized Officer

Attest:

  
Authorized Officer

STATE C

Notary Public

My Commission expires

On this 26<sup>th</sup> day of March 1981, before me personally appeared MICHAEL D. GOODMAN, to me personally known, who, being by me duly sworn, says that he is an Authorized Officer of EXCHANGE NATIONAL BANK OF CHICAGO, a national banking association, that one of the seals affixed to the foregoing instrument is the seal of said national banking association, that said instrument was signed and sealed on behalf of said national banking association by authority of its Board of Directors and he acknowledged that the execution of the foregoing instrument was the free act and deed of said national banking association.

Notary Public

ELLA B. LINSOTT

My Commission Expires December 13, 1983

# SCHEDULE I

ALLOCATION SCHEDULE OF EACH \$1,000,000 OF CSA INDEBTEDNESS PAYABLE IN (i) ONE PAYMENT OF INTEREST ONLY ON JULY 2, 1981, (ii) ONE PAYMENT OF INTEREST ONLY ON THE INTERIM INVESTOR'S INTEREST ON SEPTEMBER 15, 1981, AND (iii) 29 SEMIANNUAL INSTALLMENTS OF PRINCIPAL AND INTEREST

<u>Installment No.</u>	<u>Total Payment</u>	<u>Interest Payment</u>	<u>Principal Recovery</u>	<u>Remaining Ending Principal</u>
7/2/81	*	*	-0-	\$1,000,000.00
9/15/81	**	**	-0-	1,000,000.00
1/2/82	84,439.88	70,000.00	14,439.88	985,560.12
7/2/82	84,439.88	68,989.21	15,450.67	970,109.45
1/2/83	84,439.88	67,907.66	16,532.22	953,577.23
7/2/83	84,439.88	66,750.41	17,689.47	935,887.76
1/2/84	84,439.88	65,512.14	18,927.74	916,960.02
7/2/84	84,439.88	64,187.20	20,252.68	896,707.34
1/2/85	84,439.88	62,769.51	21,670.37	875,036.97
7/2/85	84,439.88	61,252.59	23,187.29	851,849.68
1/2/86	84,439.88	59,629.48	24,810.40	827,039.28
7/2/86	84,439.88	57,892.75	26,547.13	800,492.15
1/2/87	84,439.88	56,034.45	28,405.43	772,086.72
7/2/87	84,439.88	54,046.07	30,393.81	741,692.91
1/2/88	84,439.88	51,918.50	32,521.38	709,171.52
7/2/88	84,439.88	49,642.01	34,797.87	674,373.66
1/2/89	84,439.88	47,206.16	37,233.72	637,139.94
7/2/89	81,599.70	44,599.80	36,999.90	600,140.04
1/2/90	81,586.02	42,009.80	39,576.22	560,563.82
7/2/90	64,313.46	39,239.47	25,073.99	535,489.83
1/2/91	64,216.58	37,484.29	26,732.29	508,757.54
7/2/91	62,410.92	35,613.03	26,797.89	481,959.65
1/2/92	62,305.02	33,737.18	28,567.84	453,391.81
7/2/92	60,631.94	31,737.43	28,894.51	424,497.30
1/2/93	60,517.50	29,714.81	30,802.69	393,694.61
7/2/93	75,033.06	27,558.62	47,474.44	346,220.17
1/2/94	84,439.88	24,235.41	60,204.47	286,015.70
7/2/94	84,439.88	20,021.10	64,418.78	221,596.92
1/2/95	84,439.88	15,511.78	68,928.10	152,668.82
7/2/95	84,439.88	10,686.82	73,753.06	78,915.76
1/2/96	84,439.86	5,524.10	78,915.76	.00
	<u>\$2,301,411.78</u>	<u>\$1,301,411.78</u>	<u>\$1,000,000.00</u>	

\* Interest only on the CSA Indebtedness accrued to this date shall be payable pursuant to Article 4 hereof.

\*\* Interest only on the Interim Investor's Interest accrued to this date shall be payable pursuant to Article 4 hereof.

ANNEX A  
TO  
CONDITIONAL SALE AGREEMENT

Information Relating to Building of Equipment

- Item 1: The Equipment shall be settled for in not more than three groups of units of Equipment delivered to and accepted by the Trustee unless a greater number shall be agreed to by the parties hereto.
- Item 2: Trinity's Warranty. Trinity warrants to the Trustee for a period of one year from the date of shipment f.o.b. plant of manufacture or 25,000 miles of service, whichever occurs first, that the units of the Equipment are free of defects in material and workmanship.

TRINITY SHALL NOT BE RESPONSIBLE FOR ANY CONSEQUENTIAL DAMAGES OR ANY FURTHER LOSS BY REASON OF ANY DEFECT.

This warranty does not cover or apply to any product, accessory, part or attachment which is not manufactured by Trinity.

If the Trustee believes any part of the Equipment to be defective in material or workmanship, the Trustee must give written notice thereof to Trinity at its address specified in this Agreement prior to the expiration of the initial warranty period, specifying details as to date and place of purchase, car number, and alleged defect. Trinity will then give written instructions to the Trustee as to how any defect is to be repaired or replaced. Subject to compliance by the Trustee with the foregoing requirements and provided that Trinity determines the alleged defect to be the result of faulty material or workmanship, Trinity, without charge, will repair any defect in material or workmanship within 120 days after

the defective part or Equipment is received by Trinity at the factory from which it was shipped or at such other location specified in writing by Trinity.

THE ABOVE EXPRESS WARRANTY IS IN LIEU OF ALL OTHER WARRANTIES (EXCEPT AS TO TITLE) AND ALL WARRANTIES, EXPRESS OR IMPLIED (EXCEPT AS TO TITLE), ARE LIMITED TO ONE YEAR IN DURATION AS SPECIFICALLY PROVIDED ABOVE.

- Item 3: Trinity's Patent Indemnity. Trinity shall defend any suit or proceedings brought against the Trustee or the Lessee based on a claim that the Equipment or any part thereof furnished hereunder constitutes an infringement of any United States patent, if notified promptly in writing and given authority, information and assistance (at the expense of Trinity) for the defense of same, and Trinity shall pay all damages and costs awarded therein against the Trustee or the Lessee. In case the Equipment or any part thereof is in such suit held to constitute infringement and the use of said Equipment or parts is enjoined, Trinity shall, at its own expense, and at its option, either procure for the Trustee and the Lessee the right to continue using said Equipment or parts, or replace same with noninfringing equipment or modify it so it becomes noninfringing, or refund the purchase price. The foregoing states the entire liability of Trinity for patent infringement by the Equipment or any part thereof.
- Item 4: The Maximum Purchase Price referred to in Article 4 of the Conditional Sale Agreement to which this Annex A is attached is \$8,734,491.



ANNEX B  
TO  
CONDITIONAL SALE AGREEMENT

Units of Railroad Equipment

<u>Type</u>	<u>AAR Mechanical Designation</u>	<u>Plant</u>	<u>Quantity</u>	<u>Lessee's Identification Numbers</u>		<u>Unit Base Price</u>	<u>Total Base Price</u>	<u>Estimated Time and Place of Delivery</u>
				<u>Inclusive)</u>	<u>(Both</u>			
13,500 gallon coiled insulated tank cars	111A 100 W 3	Longview, Texas	145	AFPX 413213- 413357		\$56,250	\$8,156,250	March-June 1981, F.O.B. at Builder's Plant

LEASE OF RAILROAD EQUIPMENT

Dated as of March 15, 1981

Between

ALLIED CHEMICAL CORPORATION,  
Lessee,

and

EXCHANGE NATIONAL BANK OF CHICAGO,  
not in its individual capacity, but solely as trustee under  
a Trust Agreement dated as of the date hereof with  
Republic National Leasing Corporation

[covering 145 tank cars]

---

The rights and interests of the Lessor under this Lease  
are subject to a security interest in favor of LA SALLE  
NATIONAL BANK, as Agent for certain institutional inves-  
tors. The original of this Lease is held by said Agent.

LEASE OF RAILROAD EQUIPMENT dated as of March 15, 1981, between ALLIED CHEMICAL CORPORATION, a New York corporation ("Lessee"), and EXCHANGE NATIONAL BANK OF CHICAGO, a national banking association, acting not in its individual capacity but solely as trustee (together with its successors and assigns, "Owner-Trustee") under a Trust Agreement dated as of the date hereof ("Trust Agreement") with Republic National Leasing Corporation ("Owner").

The Owner-Trustee is entering into a Conditional Sale Agreement dated as of the date hereof ("CSA") with Trinity Industries, Inc., a Texas corporation ("Trinity"), wherein Trinity has agreed to sell and deliver to the Owner-Trustee the units of railroad equipment described in Schedule A hereto ("Equipment").

Trinity is assigning its interests in the CSA to La Salle National Bank, acting as agent for certain investors (said bank, as so acting, together with its successors and assigns, "Vendor") under a Participation Agreement dated as of the date hereof ("Participation Agreement") with the Lessee, the Owner-Trustee, the Owner, Old Stone Bank ("Interim Investor") and the parties named in Schedule A thereto (together with the Interim Investor, the "Investors").

The Lessee desires to lease such number of units of the Equipment as are delivered and accepted and settled for under the CSA ("Units") at the rentals and for the terms and upon the conditions hereinafter provided.

The Owner-Trustee will assign this Lease for security to the Vendor pursuant to an Assignment of Lease and Agreement ("Lease Assignment") dated as of the date hereof, and the Lessee will consent to the Lease Assignment pursuant to a Lessee's Consent and Agreement ("Consent") dated as of the date hereof.

NOW, THEREFORE, in consideration of the rentals to be paid and the covenants hereinafter mentioned to be kept and performed by the Lessee, the Owner-Trustee hereby leases the Units to the Lessee upon the following terms

and conditions:

§ 1. NET LEASE

This Lease is a net lease. The Lessee's obligation to pay all rentals and other amounts hereunder shall be absolute and unconditional and, except as herein provided, the Lessee shall not be entitled to any abatement of rent or of other amounts due hereunder, reduction thereof or setoff against rent or such other amounts, including, but not limited to, abatements, reductions or setoffs due or alleged to be due by reason of any past, present or future claims of the Lessee against the Owner-Trustee or the Owner under this Lease or under the CSA, including the Lessee's rights by subrogation thereunder against Trinity or the Vendor or otherwise; nor, except as otherwise expressly provided herein, shall this Lease terminate, or the respective obligations of the Owner-Trustee or the Lessee be otherwise affected, by reason of any defect in or damage to or loss of possession or loss of use or destruction of all or any of the Units of Equipment from whatsoever cause, any liens, encumbrances or rights of others with respect to any of the Units, the prohibition of or other restriction against the Lessee's use of all or any of the Units, the interference with such use by any person or entity, the invalidity or unenforceability or lack of due authorization or approval of this Lease, any present or future insolvency of or the bankruptcy, reorganization or similar proceeding against the Lessee, or for any other cause whether similar or dissimilar to the foregoing, any present or future law to the contrary notwithstanding, it being the intention of the parties hereto that the rents and other amounts payable by the Lessee hereunder shall continue to be payable in all events in the manner and at the times herein provided unless the obligation to pay the same shall be terminated pursuant to the express provisions of this Lease. To the extent permitted by applicable law, the Lessee hereby waives any and all rights which it may now have or which at any time hereafter may be conferred upon it, by statute or otherwise, to terminate, cancel, quit or surrender the lease of any of the Units except in accordance with the express terms hereof. Each rental or other payment made by the Lessee hereunder shall be final, and the Lessee shall not seek to recover all or any part of such payment from the Owner-Trustee, the Owner or the Vendor for any reason whatsoever.

## § 2. DELIVERY AND ACCEPTANCE OF UNITS

The Owner-Trustee hereby appoints the Lessee its agent for inspection and acceptance of the Units pursuant to Article 3 of the CSA. Each delivery of a Unit to the Owner-Trustee under the CSA shall be deemed to be a delivery hereunder to the Lessee at the point or points within the United States of America at which such Unit is delivered to the Owner-Trustee under the CSA. Upon such delivery, the Lessee will cause an employee or agent of the Lessee to inspect the same, and if such Unit is found to be acceptable, to accept delivery of such Unit on behalf of the Owner-Trustee under the CSA and itself hereunder and execute and deliver to the Owner-Trustee a certificate of acceptance ("Certificate of Acceptance") in accordance with the provisions of Article 3 of the CSA, stating that such Unit has been inspected and accepted on behalf of the Lessee and the Owner-Trustee on the date of such Certificate of Acceptance and is marked in accordance with § 5 hereof, whereupon such Unit shall be deemed to have been delivered to and accepted by the Lessee and shall be subject thereafter to all the terms and conditions of this Lease. The Lessee hereby represents and warrants to the Owner-Trustee that no Unit shall be put into service by the Lessee or any person under the control of or with the consent of the Lessee earlier than the date of delivery to and acceptance by the Lessee as agent for the Owner-Trustee hereunder. The delivery, inspection and acceptance hereunder of any unit of Equipment excluded from the CSA pursuant to the first paragraph of Article 4 thereof shall be null and void and ineffective to subject such Unit to this Lease.

## § 3. RENTALS

3.1. Amount and Date of Payment. The Lessee agrees to pay to the Owner-Trustee, as rental for each Unit subject to this Lease, an interim rental payment on July 2, 1981 (the "Lease Commencement Date"), and thereafter 29 consecutive semiannual payments, payable in arrears on January 2 and July 2 each year, commencing January 2, 1982. The interim rental payment shall be in an amount equal to the product of the Purchase Price (as defined in the CSA) of each Unit then subject to this Lease, multiplied by 0.0262578 for

each day elapsed from and including the Closing Date on which settlement shall have been made for such Unit under the CSA to the Lease Commencement Date. The 29 semiannual rental payments due after the interim rental payment shall each be in an amount equal to 5.78058% of the Purchase Price of each Unit subject to this Lease on the date of such payment. As additional rent, the Lessee will pay (i) the amounts, if any, to be paid by the Owner-Trustee pursuant to subparagraphs (a) and (b) of the last paragraph of Section 9.1 of the Participation Agreement on the dates specified therein, (ii) any Investment Deficiency paid pursuant to Section 2.5 thereof on the dates specified therein and (iii) on January 2, 1982, the amount, if any, which constitutes the difference between interest calculated at 14% per annum for the period July 2, 1981, to September 15, 1981, on the Interim Investor's Interest (as defined in the CSA) repaid on September 15, 1981, and the interest paid to the Interim Investor on September 15, 1981. Also, as additional rent, the Lessee will pay any additional amounts necessary to satisfy obligations of the Owner-Trustee under the CSA with respect to CSA Indebtedness and interest thereon.

3.2. Payment on Nonbusiness Day. If any of the semiannual rental payment dates referred to above is not a business day (as such term is defined in the CSA) the semiannual rental payment otherwise payable on such date shall then be payable on the next succeeding business day, and no interest shall be payable for the period from and after the nominal date for payment thereof to such next succeeding business day.

3.3. Instructions To Pay Agent and Owner-Trustee. Until the Vendor notifies the Lessee that the CSA is no longer in effect, the Owner-Trustee irrevocably instructs the Lessee to make all the payments due the Owner-Trustee provided for in this Lease (other than payments to the Owner-Trustee in its individual capacity) to the Vendor, for the account of the Owner-Trustee, in care of the Vendor. The Owner-Trustee has instructed the Vendor (a) first to apply such payments to satisfy the obligations of the Owner-Trustee under the CSA known to the Vendor to be due and payable on the date such payments are due and payable hereunder and (b) second, so long as no event of default under the CSA shall have occurred and be continuing, to pay any balance promptly to the Owner-Trustee or to the order of the Owner-Trustee in immediately

available funds at such place as the Owner-Trustee shall specify in writing. The Lessee shall have no responsibility with respect to the application by the Vendor of payments made by it in accordance with the first sentence of this paragraph.

3.4. Payment in Immediately Available Funds.

The Lessee agrees to make each payment provided for in § 3.1 hereof in immediately available funds at or prior to 11:00 a.m., Chicago, Illinois, time, at the office of the Vendor on the date due, or, if the CSA shall no longer be in effect, at the office of the Owner-Trustee.

**§ 4. TERM OF LEASE**

4.1. Beginning and Termination; Survival. The term of this Lease as to each Unit shall begin on the date of delivery and acceptance of such Unit hereunder and, subject to the provisions of §§ 7 and 10 hereof, shall terminate on the date on which the final payment of rent in respect thereof is due pursuant to § 3 hereof. The obligations of the Lessee hereunder (including, but not limited to §§ 3, 6, 7, 9, 13 and 15 hereof) shall survive the expiration of the term of this Lease.

4.2. Rights and Obligations of Lessee Subject to CSA. Notwithstanding anything to the contrary contained herein, all rights and obligations of the Lessee under this Lease and in and to the Units are subject to the rights and obligations of the Vendor under the CSA. If an event of default should occur under the CSA, the Vendor may terminate this Lease (or rescind its termination) without affecting the indemnities which by the provisions of this Lease survive the termination of its term; provided, however, that so long as (i) no Event of Default exists hereunder, (ii) the Lessee is complying with the provisions of the Consent and (iii) the Vendor is entitled to apply the Payments (as defined in the Lease Assignment) in accordance with the Lease Assignment, this Lease may not be terminated and the Lessee shall be entitled to the rights of possession, use and assignment under § 12A hereof.

**§ 5. IDENTIFICATION MARKS**

The Lessee will cause each Unit to be kept numbered with the identifying number set forth in Schedule A hereto,

or in the case of any Unit not there listed such identifying number as shall be set forth in any amendment or supplement hereto extending this Lease to cover such Unit, and will keep and maintain, plainly, distinctly, permanently and conspicuously marked on each side in letters not less than one inch in height, the words, "OWNERSHIP SUBJECT TO A SECURITY AGREEMENT FILED UNDER THE INTERSTATE COMMERCE ACT, AS AMENDED", or other appropriate words designated by the Vendor or the Owner-Trustee, with appropriate changes thereof and additions thereto as from time to time may be designated by the Owner-Trustee or the Vendor as required by law or reasonably requested in order to protect the Owner-Trustee's and the Vendor's title to and interest in such Unit and the rights of the Owner-Trustee under this Lease and of the Vendor under the CSA. The Lessee will not place or permit any such Unit to be placed in operation or exercise any control or dominion over the same until such words shall have been so marked on both sides thereof and will replace or cause to be replaced promptly any such name and words which may be removed, defaced, obliterated or destroyed. The Lessee will not change or permit to be changed the identifying number of any Unit unless and until (i) a statement of new number or numbers to be substituted therefor shall have been filed with the Vendor and the Owner-Trustee and filed, recorded and deposited by the Lessee in all public offices where this Lease and the CSA shall have been filed, recorded and deposited and (ii) the Lessee shall have furnished the Vendor and the Owner-Trustee an opinion of counsel to the effect that such statement has been so filed, recorded and deposited, such filing, recordation and deposit will protect the Vendor's and the Owner-Trustee's interests in such Units and no filing, recording, deposit or giving of notice with or to any other Federal, state or local government or agency thereof is necessary to protect the interests of the Vendor and the Owner-Trustee in such Units.

Except as above provided, the Lessee will not allow the name of any person, association or corporation to be placed on any Unit as a designation that might be interpreted as a claim of ownership; provided, however, that the Lessee may permit the Equipment to be lettered with the names, trademarks, initials or other insignias customarily used by the Lessee or any of its affiliates on railroad equipment used by it of the same or a similar type for convenience of identification of its rights to use the Equipment under this Lease, and the Equipment may be lettered in an appropriate manner for convenience of identification of the interest of the Lessee therein.

The Lessee may make any change in the lettering of



the names, trademarks, initials or other insignias at any time and as often as it deems it appropriate to do so. At the expiration of the Lease or any extension hereof, the Owner-Trustee will promptly remove, at the Lessee's sole expense, the Lessee's names, trademarks, initials or other insignias and will not allow the Units to be used or operated without first removing same.

## § 6. TAXES

Whether or not any of the transactions contemplated hereby are consummated, the Lessee agrees to pay, and to indemnify and hold the Owner-Trustee, the Owner, the Investors and the estate held in trust by the Owner-Trustee under the Trust Agreement harmless from all taxes (income, gross receipts, franchise, sales, use, property [real or personal, tangible or intangible] and stamp taxes), assessments, fees and charges of any nature whatsoever, together with any penalties, fines, additions to tax or interest thereon, howsoever imposed, whether levied or imposed upon the Owner-Trustee, the Owner, the Vendor, the Investors, the Lessee, the trust estate created by the Trust Agreement or otherwise, by any Federal, state or local government or governmental subdivision in the United States or by any foreign country or subdivision thereof, upon or with respect to: any Unit or any part thereof; the manufacture, purchase, ownership, delivery, leasing, possession, use, operation, transfer of title, return or other disposition thereof; the rentals, receipts or earnings arising therefrom or value added thereto; this Lease, the Lease Assignment, the Consent, the Trust Agreement, the Participation Agreement, the CSA or the CSA Assignment, any payment made pursuant to any such agreement, or the property, the income or other proceeds received with respect to property held in trust by the Owner-Trustee under the Trust Agreement (all such taxes, assessments, fees, charges, penalties, fines, additions to tax and interest imposed as aforesaid being hereinafter called "Taxes"); excluding, however: (i) Taxes of the United States or of any state or political subdivision thereof and (if and to the extent that any such tax is currently creditable against United States Federal income taxes whether or not actually allowed as a credit with respect to any person indemnified hereunder) of any foreign country or subdivision thereof, imposed on or measured solely by the net income or excess profits of the Owner-Trustee, the Owner, the Investors or the Vendor, or franchise or value added tax to the extent adopted in substitution thereof, other than Taxes arising out of or imposed in respect of the receipt of indemnification payments

pursuant to this Lease or gross receipts taxes which are in lieu of a property tax; provided that such Taxes of any foreign country or subdivision thereof incurred as a result of the indemnified party being taxed by such foreign country or jurisdiction on its worldwide income without regard to the transactions contemplated by this Lease shall be excluded whether or not the indemnified party is currently allowed a credit against its United States Federal income taxes; (ii) any Taxes imposed as a direct result of a voluntary transfer or other voluntary disposition by the Owner or any transfer or disposition by the Owner resulting from bankruptcy or other proceedings for the relief of creditors in which the Owner is the debtor, whether voluntary or involuntary, of any interest in any Unit or interest in rentals under this Lease or in the Trust Estate (as defined in the Trust Agreement) without the consent of the Lessee, unless, in each case, such transfer or disposition is required or contemplated by this Lease or an Event of Default shall have occurred and be continuing; and (iii) any Taxes imposed on or measured by any trustee fees received by the Owner-Trustee or any compensation received by the Vendor; provided, however, that the Lessee shall not be required to pay any Taxes during the period it may be contesting the same in the manner provided in the next succeeding paragraph. The Lessee further agrees to pay on or before the time or times prescribed by law any tax imposed on or measured solely by the net income of the Lessee (or the affiliated group, within the meaning of section 1504 of the Internal Revenue Code of 1954, as amended, of which the Lessee is a member) under the laws of the United States or of any state or political subdivision thereof, or of any foreign country or subdivision thereof which, if unpaid, might result in a lien or other encumbrance upon any Unit; provided, however, that the Lessee shall not be required to pay any such tax during the period it may be contesting the same. The amount which the Lessee shall be required to pay with respect to any taxes indemnified against pursuant to this § 6 shall be an amount sufficient to restore the indemnified party to the same position such indemnified party would have been in had such Taxes not been imposed.

If claim is made against any indemnified party for any Taxes indemnified against under this § 6, such party shall promptly notify the Lessee. If reasonably requested by the Lessee in writing, such indemnified party shall, upon receipt of indemnity satisfactory to it for all costs, expenses, losses, legal and accountants' fees and disbursements, penalties, fines, additions to tax and interest, and at the expense of the Lessee, contest in good

faith the validity, applicability or amount of such Taxes by (a) resisting payment thereof if possible, (b) not paying the same except under protest, if protest is necessary and proper, and (c) if payment is made, using reasonable efforts to obtain a refund thereof in appropriate administrative or judicial proceedings, or both. The Lessee may also contest, at its own expense, the validity, applicability or amount of such Taxes in the name of such indemnified party; provided that no proceeding or action relating to such contest shall be commenced (nor shall any pleading, motion, brief or other paper be submitted or filed in the name of such indemnified party in any such proceeding or action) without the prior written consent of such indemnified party, which consent shall not be unreasonably withheld. If such indemnified party shall obtain a refund of all or any part of such Taxes previously reimbursed by the Lessee in connection with any such contest or an amount representing interest thereon applicable to the amount paid by the Lessee and the period of such payment, such indemnified party shall pay to the Lessee the amount received from the Lessee in respect of such refund or interest net of expenses; provided, however, that no Event of Default and no event which, with notice or lapse of time or both, would constitute an Event of Default shall have occurred and be continuing.

If any person indemnified hereunder shall be allowed a credit for any foreign taxes for which the Lessee shall have reimbursed such indemnified party, such indemnified party shall pay to the Lessee the amount of such credit, plus an amount equal to any tax benefits realized by such indemnified party as a result of any payment to the Lessee pursuant to this sentence.

For purposes of this paragraph, in determining the order in which the indemnified party utilizes withholdings or other foreign taxes as a credit against such indemnified party's United States income taxes, such indemnified party shall be deemed to utilize tax credits in the following order: (i) all foreign taxes arising in connection with its business other than equipment lease transactions, (ii) all foreign taxes arising from lease transactions entered into prior to the transactions contemplated hereby, (iii) all foreign taxes arising from this lease transaction and (iv) all foreign taxes arising in connection with lease transactions entered into after the transactions contemplated hereby.

In case any report or return is required to be made with respect to any obligation of the Lessee under this § 6 or arising out of this § 6, except obligations resulting from the second sentence of the first paragraph of this § 6, the Lessee shall either make such report or return in such manner as will show the interests of the Owner-Trustee in the Units, or shall promptly notify the Owner-Trustee, the Owner and the Vendor of such requirement and shall make such report or return in such manner as shall be reasonably satisfactory to the Owner-Trustee, the Vendor and the Owner. All costs and expenses (including legal and accountants' fees) of preparing any such return or report shall be borne by the Lessee.

All the obligations of the Lessee under this § 6 shall survive and continue, notwithstanding the expiration of the Lease. All amounts payable by the Lessee pursuant to this § 6 shall be payable directly to the indemnified party entitled to indemnification, except to the extent paid to a governmental agency or taxing authority.

The Lessee shall furnish promptly upon request, such information and data as is normally available to the Lessee and which the Owner-Trustee, the Vendor or the Owner reasonably may require to permit compliance with the requirement of any taxing authority.

#### § 7. PAYMENT FOR CASUALTY OCCURRENCES, INSURANCE

7.1. Definition of Casualty Occurrence;  
Payments. In the event that any Unit shall be or become worn out, lost, stolen, destroyed, irreparably damaged, or permanently rendered unfit for use from any cause whatsoever, or taken or requisitioned by condemnation or otherwise resulting in loss of possession by the Lessee for a period of 90 consecutive days, except requisition for use by the United States Government ("Government") for a period not in excess of the then remaining term of this Lease (such occurrences being hereinafter called Casualty Occurrences) during the term of this Lease, or until such Unit shall have been returned in the manner provided in § 11 or 13 hereof, the Lessee shall within ten days after it

shall have reasonably determined that such Unit has suffered a Casualty Occurrence notify the Owner-Trustee and the Vendor with respect thereto specifying the date, cause and extent of such Casualty Occurrence. On the semiannual rental payment date next succeeding the delivery of such notice (or, in the event the term of this Lease has already expired or will expire within 10 days after delivery of such notice, on a date within 10 days of such delivery), the Lessee shall pay to the Owner-Trustee an amount equal to the rental payment or payments in respect of such Unit due and payable on such date plus a sum equal to the Casualty Value (as defined in the next sentence) of such Unit as of the date of such payment in accordance with the schedule referred to hereafter. The Casualty Value of each Unit as of the payment date on which payment is to be made as aforesaid shall be that percentage of the Purchase Price of such Unit as is set forth in Schedule B hereto opposite such date. Upon the making of such payment by the Lessee in respect of any Unit, the rental for such Unit shall cease to accrue as of the date of such payment, the term of this Lease as to such Unit shall terminate and (except in the case of the loss, theft or complete destruction of such Unit) the Owner-Trustee shall be entitled to recover possession of such Unit at its own expense.

If the date upon which the making of such payment by the Lessee in respect of any Unit as required as aforesaid shall be after the term of this Lease in respect of such Unit has expired, no rental for such Unit shall accrue after the end of such term but the Lessee, in addition to paying the Casualty Value for such Unit shall pay interest thereon from the end of such term to the date of such payment at the rate of 14% per annum. However, if the Casualty Occurrence occurs after the Lease Term has expired, the Lessee shall pay interest thereon at the rate of 14% per annum commencing 10 days after such Casualty Occurrence to the date of such payment.

7.2. Lessee Agent for Disposal. The Owner-Trustee hereby appoints the Lessee its agent to dispose of any Unit suffering a Casualty Occurrence or any component thereof, before or after the expiration of this Lease, at the best price obtainable by the Lessee upon exercise of reasonable efforts on an "as is, where is" basis and will pay the Lessee's reasonable expenses for such disposal. Provided that the Lessee has previously paid the Casualty Value to the Owner-Trustee and is not in default hereunder, the Lessee shall be entitled to the proceeds of such disposition to the extent they do not exceed the Casualty Value of such Unit, and shall pay any excess to the Owner-Trustee.

7.3. Requisition by United States Government.

In the event of the requisition for use by the Government of any Unit for a period which does not exceed the term of this Lease, all the obligations of the Lessee under this Lease with respect to such Unit shall continue to the same extent as if such requisition had not occurred. All payments received by the Owner-Trustee or the Lessee from the Government for the use of such Unit during the term of this Lease shall be paid over to, or retained by, the Lessee provided no Event of Default (or other event which after notice or lapse of time or both would become an Event of Default) shall have occurred and be continuing.

7.4. No Release. Except as hereinabove in this § 7 provided, the Lessee shall not be released from its obligations hereunder in the event of, and shall bear the risk of, any Casualty Occurrence to any Unit from and after delivery and acceptance thereof by the Lessee hereunder until expiration of this Lease and Lessee's obligations under §§ 11 and 13 hereof.

7.5. Insurance. The Lessee shall, at all times prior to the return of the Equipment to the Owner-Trustee, at its own expense, cause to be carried and maintained public liability insurance and property insurance in respect of the Units, naming the Owner-Trustee, the Owner and the Vendor as additional named insureds as their interests may appear, at least in amounts and against risks customarily insured against by the Lessee in respect of similar equipment owned by it; provided, however, that, subject to availability, the amount of such public liability coverage shall not, at any time, be less than \$20 million per occurrence.

The Lessee shall obtain from each insurer under the paragraph immediately above an agreement, by endorsement or separate instrument, that such insurer will give the Owner-Trustee, the Owner and the Vendor 30 days' written notice before such insurer's policy shall be materially altered or canceled or not renewed. In January of each year, the Lessee shall deliver to the Owner-Trustee, the Owner and the Vendor a certificate of insurance by or on behalf of each insurer stating the coverage, named insureds and limits of each such policy. Any policies of insurance

carried in accordance with this paragraph shall in addition waive any right to claim premiums or commissions against the Owner, the Owner-Trustee and the Vendor and, in the event such policies shall contain breach of warranty provisions, such policies shall provide that in respect of the interests of the Owner-Trustee, the Owner and the Vendor in such policies the insurance shall not be invalidated by any action or inaction of the Lessee or any other person (other than the Owner-Trustee, the Owner and the Vendor, respectively) and shall insure the Owner-Trustee, the Owner and the Vendor regardless of any breach or violation of any warranty, declaration or condition contained in such policies by the Lessee or by any other person (other than the Owner-Trustee, the Owner or the Vendor, respectively).

7.6. Insurance Proceeds and Condemnation Payments. If the Owner-Trustee shall receive (directly or from the Vendor) any insurance proceeds from a policy or policies obtained by the Lessee or condemnation payments in respect of such Units suffering a Casualty Occurrence, the Owner-Trustee shall pay forthwith such proceeds or condemnation payments to the Lessee up to an amount equal to the Casualty Value with respect to any Unit theretofore paid by the Lessee and any balance of such proceeds or condemnation payments shall remain the property of the Owner-Trustee; provided, however, that no Event of Default shall have occurred and be continuing and the Lessee shall have made payment of the Casualty Value thereof, and accrued rentals in respect of such Units, to the Owner-Trustee.

7.7. Economic Obsolescence. During the original term of this Lease, in the event that the Lessee shall, in its reasonable judgment, determine that all the Units remaining under this Lease have become economically obsolete or surplus to the Lessee's and its subsidiaries' requirements in the Lessee's and its subsidiaries' business and an officer of the Lessee shall have provided a certificate to such effect to the Owner-Trustee and the Agent, the Lessee shall have the right, at its option and on at least 120 days' prior written notice to the Owner-Trustee, to terminate (which act shall hereinafter be called the "Termination") this Lease as to not less than all such Units as of any succeeding rental payment date specified in such notice occurring more than 120 days thereafter (such termination date so specified being hereinafter called the "Termination Date"); provided, however, that

(i) the Termination Date shall not be earlier than the 14th semiannual rental payment date, (ii) no Event of Default or other event which after the lapse of time or the giving of notice or both would become an Event of Default shall have occurred and be continuing on such date and (iii) on the Termination Date all Units shall be in the condition required for redelivery pursuant to § 13 hereof.

During the period after the giving of such notice until the fifth business day preceding the Termination Date, the Lessee shall use its best efforts to obtain bids for the purchase of each such Unit, and the Lessee shall at least five business days prior to such Termination Date certify to the Owner-Trustee the amount of each such bid and the name and address of the party (which shall not be a corporation, other entity or individual affiliated with the Lessee or any party for whom the Lessee or any such affiliate intends thereafter to lease such Unit) submitting such bid. On the Termination Date the Owner-Trustee shall sell each such Unit for cash to the bidder who shall have submitted the highest bid prior to the Termination Date. The total sale price realized at each such sale shall be retained by the Owner-Trustee.

On such Termination Date, the Lessee shall pay to the Owner-Trustee with respect to each such Unit an amount equal to (i) the excess, if any, of the Termination Value (as hereinafter defined) for each such Unit computed as of such date over the sale price of any such Unit so sold after the deduction of all expenses incurred by the Owner-Trustee in connection with such sale and (ii) the rental payment with respect to each such Unit due on such Termination Date. The Termination Value of each such Unit as of the Termination Date on which payment is to be made shall be equal to that percentage of the Purchase Price of such Unit as is set forth in Schedule C hereto opposite such date. In no event shall the aggregate amount of sale proceeds retained by the Owner-Trustee and payments of rental and Termination Value received by the Owner-Trustee as aforesaid be less than the Termination Value (as defined in Section 7.4 of the CSA) with respect to such Units as of such Termination Date.

If no sale of the Units shall occur on the Termination Date with respect thereto as provided above,



this Lease shall continue in full force and effect without change.

Subject to the receipt by the Owner-Trustee on the Termination Date of the amounts above described, the obligation of the Lessee to pay rent pursuant to § 3 hereof in respect of such Unit on each rental payment date shall continue to and include the Termination Date but shall then terminate. The Owner-Trustee shall be under no duty to solicit bids, to inquire into the efforts of the Lessee to obtain bids or otherwise to take any action or incur any cost or expense in connection with any sale other than to transfer or to cause to be transferred all the Owner-Trustee's right, title and interest in and to such Unit to the purchaser named in the highest bid certified by the Lessee to the Owner-Trustee as above provided. Any such sale shall be free and clear of all the Lessee's rights to such Unit, but otherwise shall be made without warranties other than against the Owner-Trustee's acts.

If the Lessee shall exercise its option to effect a Termination, the Owner-Trustee may, notwithstanding such election by the Lessee, by written notice to the Lessee, the Agent and the Investors given within 60 days after the termination notice is given to the Owner-Trustee and upon satisfaction and discharge of the Owner-Trustee's obligations under the CSA with respect to any such Unit, elect to retain such Unit. In the event the Owner-Trustee shall so elect to retain such Unit and delivers to the Lessee evidence of the satisfaction and discharge of the Owner-Trustee's obligations under the CSA with respect to such Unit, the Lessee shall not be obligated to pay the Termination Value to the Owner-Trustee and the Lessee shall deliver such Unit to the Owner-Trustee in accordance with the provisions of § 13 hereof.

#### § 8. REPORTS

On or before April 30 in each year, commencing with April 30, 1982, the Lessee will furnish to the Owner-Trustee, the Owner and the Vendor an accurate statement (a) setting forth as at the preceding December 31 the amount, description and numbers of all Units then leased hereunder and covered by the CSA, the amount, description and numbers of all Units that have suffered a Casualty Occurrence during the preceding calendar year (specifying

the dates of such Casualty Occurrences) or to the knowledge of the Lessee are then undergoing repairs (other than running repairs) or are then withdrawn from use pending repairs (other than running repairs) and such other information regarding the condition and state of repair of the Units as the Owner-Trustee or the Vendor may reasonably request and (b) stating that, in the case of all Units repainted or repaired during the period covered by such statement, the numbers and the markings required by § 5 hereof and the CSA have been preserved or replaced. The Owner-Trustee shall, at its sole cost and expense, have the right by its agents to inspect the Units and the Lessee's records with respect thereto at such reasonable times as the Owner-Trustee may request as may be reasonably necessary to confirm to the Owner-Trustee the existence of proper maintenance of the Units during the continuance of this Lease.

§ 9. DISCLAIMER OF WARRANTIES;  
COMPLIANCE WITH LAWS AND RULES;  
MAINTENANCE; INDEMNIFICATION

9.1. Disclaimer of Warranties. NEITHER THE OWNER-TRUSTEE NOR THE OWNER MAKES, HAS MADE OR SHALL BE DEEMED TO MAKE OR HAVE MADE ANY WARRANTY OR REPRESENTATION, EITHER EXPRESS OR IMPLIED, AS TO THE DESIGN, COMPLIANCE WITH SPECIFICATIONS, OPERATION OR CONDITION OF, OR AS TO THE QUALITY OF THE MATERIAL, EQUIPMENT OR WORKMANSHIP IN, THE UNITS OR ANY COMPONENT THEREOF DELIVERED TO THE LESSEE HEREUNDER, AND NEITHER THE OWNER-TRUSTEE NOR THE OWNER MAKES ANY WARRANTY OF MERCHANTABILITY OR FITNESS OF THE UNITS OR ANY COMPONENT THEREOF FOR ANY PARTICULAR USE OR PURPOSE NOR AS TO TITLE TO THE UNITS OR ANY COMPONENT THEREOF, NOR ANY OTHER REPRESENTATION OR WARRANTY, EXPRESS OR IMPLIED, WITH RESPECT TO ANY UNIT OR ANY COMPONENT THEREOF (EITHER UPON DELIVERY THEREOF TO THE LESSEE OR OTHERWISE), it being agreed that all such risks, as between the Owner-Trustee and the Lessee, are to be borne by the Lessee; but the Owner-Trustee hereby irrevocably appoints and constitutes the Lessee its agent and attorney-in-fact during the term of this Lease to assert and enforce from time to time, in the name of and for the account of the Owner-Trustee and/or the Lessee, as their interests may appear, at the Lessee's sole cost and expense, whatever claims and rights the Owner-Trustee may have against Trinity or any other person, including, but not limited to, any claims and rights arising under the provisions of the CSA. The Owner-Trustee and the Owner shall not have any responsibility or liability to the Lessee or any other

person or entity with respect to any of the following: (i) any liability, loss or damage caused or alleged to be caused directly or indirectly by any Units or by any inadequacy thereof or deficiency or defect therein or by any other circumstance in connection therewith; (ii) the use, operation or performance of any Units or any risks relating thereto; (iii) any interruption of service, loss of business or anticipated profits or consequential damages; or (iv) the delivery, operation, servicing, maintenance, repair, improvement or replacement of any Units. The Lessee's delivery of a Certificate of Acceptance shall be conclusive evidence as between the Lessee and the Owner-Trustee that the Units described therein are in all the foregoing respects satisfactory to the Lessee, and the Lessee will not assert any claim of any nature whatsoever against the Owner or the Owner-Trustee based on any of the foregoing matters.

9.2. Compliance with Laws and Rules. The Lessee agrees, for the benefit of the Owner-Trustee, the Owner and the Vendor, to comply in all respects (including, without limitation, with respect to the use, maintenance and operation of each Unit) with all laws of the jurisdictions in which its operations involving the Units may extend, with the interchange rules of the Association of American Railroads and with all lawful rules of the United States Department of Transportation, the Interstate Commerce Commission and any other legislative, executive, administrative or judicial body exercising any power or jurisdiction over the Units ("Applicable Laws"), to the extent that such laws and rules affect the title, operation or use of the Units and in the event that such laws or rules require any alteration, replacement, modification or addition of or to any part of any Unit, the Lessee will fully conform therewith at its own expense; provided, however, that the Lessee may, in good faith, contest the validity or application of any such law or rule in any reasonable manner which does not, in the opinion of the Owner-Trustee or the Vendor, adversely affect the property or rights of the Owner-Trustee or the Vendor under this Lease or under the CSA.

9.3. Maintenance. The Lessee agrees that, at its own cost and expense, it will maintain and keep each Unit (including any parts installed on or replacements made to any Unit and considered an accession thereto as hereinbelow provided) which is subject to this Lease in

good operating order and repair, ordinary wear and tear excepted. Except for alterations or changes required by law, the Lessee shall not, without the prior written approval of the Owner-Trustee, effect any permanent structural change in the design, construction or body of the Units or appurtenances thereto which will materially change the use for which the Equipment is intended.

9.4. Additions and Accessions. The Lessee and its affiliates, at their own cost and expense, may from time to time make such alterations, modifications and additions (including, without limitation, any special devices or assemblies at any time attached or affixed to any Unit, the cost of which is not included in the Purchase Price of such Unit and which are not required for the operation or use of such Unit by the Interstate Commerce Commission, the United States Department of Transportation or any other legislative, executive, administrative or judicial body exercising any power or jurisdiction over such Unit) (hereinafter collectively called Additions) to the Units as the Lessee may deem desirable in the proper conduct of its business so long as such Additions shall not be inconsistent with the continuing operation of the Units in accordance with their original conventional purpose and shall not diminish the value, utility or condition of the Units below the value, utility and condition thereof immediately prior to the making of such Additions, assuming the Units were then in the condition required to be maintained by the terms of this Lease.

Title to all Parts (as hereinbelow defined) incorporated in or installed as part of the Units shall without further act vest in the Owner-Trustee and the Vendor as their respective interests may appear in the Unit itself in the following cases: (i) such Part is in replacement of or in substitution for, and not in addition to, any Part originally incorporated in or installed as part of a Unit at the time of the acceptance thereof hereunder or any Part in replacement of, or in substitution for, any such replaced or substituted Part, (ii) such Part is required to be incorporated in or installed as part of the Unit pursuant to the terms of § 9.2 or § 9.3 hereof, or (iii) notwithstanding the provisions of the first paragraph of this § 9.4, such Part cannot be readily removed from the Unit to which it relates without material damage thereto

and without diminishing or impairing the value or utility which such Unit shall have had at such time had such alteration or addition not occurred. In all other cases, if no Event of Default under § 10 hereof (or other event which after lapse of time or notice or both would constitute an Event of Default) shall have occurred and be continuing, title to Parts incorporated in or installed as parts of the Units as a result of such alterations or additions shall vest in the Lessee. The term Part for the purposes of this paragraph and § 13 hereof shall be defined to include any appliance, part, instrument, accessory, furnishing or other equipment of any nature which may from time to time be incorporated in or installed as part of any Unit.

9.5. Indemnification. The Lessee shall pay, and shall protect, indemnify and hold the Owner-Trustee (as trustee and in its individual capacity), the Owner and the Vendor, and their respective successors, assigns, agents and servants (hereinafter called Indemnified Persons), harmless from and against any and all causes of action, suits, penalties, claims, demands or judgments, of any nature whatsoever which may be imposed on, incurred by or asserted against any Indemnified Person (including any or all liabilities, obligations, damages, costs, disbursements, expenses [including without limitation attorneys' fees and expenses of any Indemnified Person] relating thereto) in any way relating to or arising or alleged to arise out of this Lease or any of such Indemnified Person's Documents (as defined in the Participation Agreement) or the Units, including without limitation those in any way relating to or arising or alleged to arise out of (i) the manufacture, construction, purchase, acceptance, rejection, ownership, delivery, nondelivery, lease, possession, use, operation, condition, sale, return or other disposition of any Unit or portion thereof; (ii) any latent or other defects whether or not discoverable by any Indemnified Person or the Lessee; (iii) any claim for patent, trademark or copyright infringement; (iv) any claims based on strict liability in tort; (v) any injury to or the death of any person or any damage to or loss of property on or near the Units or in any manner growing out of or concerned with, or alleged to grow out of or be connected with, the ownership, use, replacement, adaptation or maintenance of

the Units or of any other equipment in connection with the Units (whether owned or under the control of the Owner-Trustee, the Lessee or any other person) or resulting or alleged to result from the condition of any thereof; and (vi) any violation, or alleged violation, of any provision of this Lease or any Document or of any agreement, law, rule, regulation, ordinance or restriction, affecting or applicable to the Units or the leasing, ownership, use, replacement, adaptation or maintenance thereof (all of the foregoing being herein called "Indemnified Matters"). The Lessee shall not be responsible to an Indemnified Person, other than the Owner-Trustee, under this § 9.5 with respect to any claim to the extent that such claim arises from the Indemnified Person's own default or own negligence. In the case of the Owner-Trustee, the Lessee will not be responsible to the extent such claim arises from the Owner-Trustee's gross negligence or wilful misconduct. The Lessee shall be obligated under this § 9, irrespective of whether any Indemnified Person shall also be indemnified with respect to the same matter under any other agreement by any other person, and the Indemnified Person seeking to enforce the indemnification may proceed directly against the Lessee under this § 9 without first resorting to any such other rights of indemnification. In case any action, suit or proceeding is brought against any Indemnified Person in connection with any claim indemnified against hereunder, the Lessee may and, upon the request of such Indemnified Person will, at the expense of the Lessee resist and defend such action, suit or proceeding, or cause the same to be resisted or defended by counsel selected by the Lessee and approved by such Indemnified Person, as the case may be, and, in the event of any failure by the Lessee so to do, the Lessee shall pay all costs and expenses (including without limitation reasonable attorneys' fees and expenses) incurred by such Indemnified Person in connection with such action, suit or proceeding. In the event the Lessee is required to make any payment under this § 9, the Lessee shall pay such Indemnified Person an amount which, after deduction of all taxes required to be paid by such Indemnified Person in respect of the receipt thereof under the laws of the United States or of any political subdivision thereof (after giving credit for any savings in respect of any such taxes by reason of deductions, credits or allowances in respect of the payment of the expense indemnified against, and of any other such taxes as reasonably determined in the sole discretion of the Indemnified Person), shall be equal to the amount of such payment. The Lessee and the Owner-

Trustee each agrees to give each other promptly upon obtaining knowledge thereof written notice of any claim or liability hereby indemnified against. Upon the payment in full of any indemnities as contained in this § 9 by the Lessee, and provided that no Event of Default (or other event which with lapse of time or notice or both would constitute an Event of Default) shall have occurred and be continuing, it shall be subrogated to any right of such Indemnified Person in respect of the matter against which indemnity has been given. Any payments received by such Indemnified Person from any person (except the Lessee) as a result of any matter with respect to which such Indemnified Person has been indemnified by the Lessee pursuant to this § 9 shall be paid over to the Lessee to the extent necessary to reimburse the Lessee for indemnification payments previously made in respect of such matter but only after such Indemnified Person has been indemnified in full.

The Lessee further agrees to indemnify, protect and hold harmless the Vendor, the Owner and the Owner-Trustee, as third-party beneficiaries hereof, from and against any and all liability, claims, costs, charges and expenses, including royalty payments and counsel fees, in any manner imposed upon or accruing against the Vendor, the Owner or the Owner-Trustee because of the use in or about the construction or operation of any of the Equipment of any article or material specified by the Lessee, the Owner-Trustee or the Owner and not manufactured by Trinity or of any design, system, process, formula or combination specified by the Lessee, the Owner-Trustee, or the Owner and not developed or purported to be developed by Trinity which infringes or is claimed to infringe on any patent or other right.

9.6. Survival. The indemnities contained in this § 9 shall survive the expiration or termination of this Lease with respect to all events, facts, conditions or other circumstances occurring or existing prior to such expiration or termination and are expressly made for the benefit of, and shall be enforceable by, any Indemnified Person. None of the indemnities in this § 9 shall be deemed to create any rights of subrogation which do not already exist in any insurer or third party against the Lessee therefor, from or under any Indemnified Person, whether because of any claim paid or defense provided for the benefit thereof or otherwise.

9.7. Payments for Indemnification. All payments hereunder shall be made directly to the Indemnified Person.

9.8. Reports. The Lessee agrees at its expense to prepare and deliver to the Owner-Trustee within a reasonable time prior to the required date of filing (or, to the extent permissible, file on behalf of the Owner-Trustee) any and all reports (other than income tax returns) to be filed by the Owner-Trustee with any Federal, state or other regulatory authority by reason of the ownership by the Owner-Trustee or the Owner of the Units or the leasing thereof to the Lessee.

## § 10. DEFAULT

10.1. Events of Default; Remedies. If, during the continuance of this Lease, one or more of the following events (each such event being herein sometimes called an Event of Default) shall occur:

(a) payment of any part of the rental provided in § 3 hereof or payment in respect of any Casualty Occurrence pursuant to § 7 hereof shall not be made by the Lessee when such payment is due and such default shall continue for 12 days;

(b) default shall be made in the observance or performance of any other of the covenants, conditions and agreements on the part of the Lessee contained herein, in the Participation Agreement or the Consent, and such default shall continue for 30 days after written notice from the Owner-Trustee or the Vendor to the Lessee specifying the default and demanding that the same be remedied, unless, at the end of such 30-day period and thereafter for so long as, the Lessee shall in good faith be diligently proceeding to cure such default and the resulting delay does not materially prejudice the rights of the Owner-Trustee;

(c) the Lessee shall make or permit any unauthorized assignment or transfer of this Lease, or any interest herein, or of the right to possession of the Units, or any thereof;



(d) a petition for reorganization under Title 11 of the United States Code, as now constituted or as hereafter amended, shall be filed by or against the Lessee and, unless such petition shall have been dismissed, nullified, stayed or otherwise rendered ineffective (but then only so long as such stay shall continue in force or such ineffectiveness shall continue), all the obligations of the Lessee under this Lease, the Consent and the Indemnity Agreement (as defined in the Participation Agreement) shall not have been and shall not continue to be duly assumed in writing within 60 days after such petition shall have been filed, pursuant to a court order or decree, by a trustee or trustees appointed (whether or not subject to ratification) in such proceedings in such manner that such obligations shall have the same status as expenses of administration and obligations incurred by such trustee or trustees;

(e) any proceedings shall be commenced by or against the Lessee for any relief which includes, or might result in, any modification of the obligations of the Lessee under this Lease, the Participation Agreement, the Consent or the Indemnity Agreement, under any bankruptcy or insolvency laws, or laws relating to the relief of debtors, readjustments of indebtedness, reorganizations, arrangements, compositions or extensions (other than a law which does not permit any readjustments of the obligations of the Lessee hereunder) and, unless such proceedings shall have been dismissed, nullified, stayed or otherwise rendered ineffective (but then only so long as such stay shall continue in force or such ineffectiveness shall continue), all the obligations of the Lessee under this Lease, the Participation Agreement, the Consent and the Indemnity Agreement shall not have been and shall not continue to be duly assumed in writing, pursuant to a court order or decree, by a trustee or trustees or receiver or receivers appointed in such proceedings in such manner that such obligations shall have the same status as obligations incurred by such a trustee or trustees or receiver or receivers, within 60 days after such proceedings shall have been commenced; or

(f) an event of default set forth in Article 16 of the CSA shall have occurred arising out of any default by the Lessee in performing any of its obligations hereunder or under its Documents (as defined in the Participation Agreement);

then, in any such case, the Owner-Trustee, at its option, may,

(aa) proceed by appropriate court action or actions, either at law or in equity, to enforce performance by the Lessee of the applicable covenants of this Lease or to recover damages for the breach thereof; or

(bb) by notice in writing to the Lessee terminate this Lease, whereupon all rights of the Lessee to the use of the Units shall absolutely cease and terminate as though this Lease had never been made, but the Lessee shall remain liable under this Lease to the extent that this Lease provides that the obligations of the Lessee survive the termination or expiration hereof; and thereupon the Owner-Trustee may by its agents enter upon the premises of the Lessee or other premises where any of the Units may be and take possession of all or any of such Units and thenceforth hold, possess, sell, operate, lease to others and enjoy the same free from any right of the Lessee, or its successors or assigns, to use the Units for any purposes whatever and without any duty to account to the Lessee for such action or inaction or for any proceeds arising therefrom; but the Owner-Trustee shall, nevertheless, have a right to recover from the Lessee any and all amounts which under the terms of this Lease may be then due or which may have accrued to the date of such termination (computing the rental for any number of days less than a full rental period by multiplying the rental for such full rental period by a fraction of which the numerator is such number of days and the denominator is the total number of days in such full rental period) and also to recover forthwith from the Lessee as damages for loss of a bargain and not as a penalty, whichever of the following amounts the Owner-Trustee, in its sole discretion, shall specify: (x) a sum with respect to each Unit which represents the excess of (1) the present value, at the time of such termination, of the entire unpaid balance of all rental for such Unit which would otherwise have accrued hereunder from the date of such termination to the end of the term of this Lease as to such Unit over (2) the then present value of the

rentals which the Owner-Trustee reasonably estimates to be obtainable for the Unit during such period, such present value to be computed in each case on the basis of a 10% per annum discount, compounded semiannually from the respective dates upon which rentals would have been payable hereunder had this Lease not been terminated, together with any damages and expenses, including reasonable attorneys' fees, in addition thereto which the Owner-Trustee shall have sustained by reason of the breach of any covenant, representation or warranty of this Lease other than for the payment of the rental; or (y) an amount equal to the excess, if any, of the Casualty Value as of the rental payment date on or next preceding the date of termination over the amount the Owner-Trustee reasonably estimates to be the sales value (after deduction of all estimated expenses of such sale) of such Unit at such time; provided, however, that in the event the Owner-Trustee shall have sold any Unit, the Owner-Trustee, in lieu of collecting any amounts payable to the Owner-Trustee by the Lessee pursuant to the preceding clauses (x) and (y) of this part (bb) with respect to such Unit, shall demand that the Lessee pay the Owner-Trustee and the Lessee shall pay to the Owner-Trustee on the date of such sale, as liquidated damages for loss of a bargain and not as a penalty, an amount equal to the excess, if any, of the Casualty Value for such Unit, as of the rental payment date on or next preceding the date of termination, over the net proceeds of such sale.

In addition, the Lessee shall be liable, except as otherwise provided above, for any and all unpaid amounts due hereunder before, during or after the exercise of any of the foregoing remedies and for all reasonable attorneys' fees and other costs and expenses incurred by reason of the occurrence of any Event of Default or the exercise of the remedies of the Owner and the Owner-Trustee with respect thereto, including all costs and expenses incurred in connection with the return of any Unit.

10.2. Remedies Not Exclusive; Waiver. The remedies in this Lease provided in favor of the Owner and the Owner-Trustee shall not be deemed exclusive, but shall be cumulative, and shall be in addition to all other remedies

in its favor existing at law or in equity. The Lessee hereby waives any requirements of law, now or hereafter in effect, which might limit or modify the remedies herein provided, to the extent that such waiver is permitted by law. The Lessee hereby waives any and all existing or future claims to any offset against the rental payments due hereunder, and agrees to make rental payments regardless of any offset or claim which may be asserted by the Lessee or on its behalf.

10.3. Failure To Exercise Rights is not Waiver. The failure of the Owner-Trustee to exercise the rights granted it hereunder upon the occurrence of any of the contingencies set forth herein shall not constitute a waiver of any such right upon the continuation or recurrence of any such contingencies or similar contingencies, and a waiver of any such right on one occasion shall not constitute a waiver of such right as to any other occasion and shall not be effective unless in writing signed by the Owner-Trustee.

10.4. Notice of Event of Default to Owner-Trustee. The Lessee also agrees to furnish the Owner-Trustee, the Owner and the Vendor, promptly upon any responsible officer becoming aware of any condition which constitutes an Event of Default under this Lease or which, after notice or lapse of time or both, would constitute such an Event of Default, written notice specifying such condition and the nature and status thereof. For the purposes of this Section, a "responsible officer" shall mean, with respect to the subject matter of any covenant, agreement or obligation of the Lessee in this Lease contained, any corporate official of the Lessee who in the normal performance of his operational responsibilities would have knowledge of such matter and the requirements of this Lease with respect thereto.

## § 11. RETURN OF UNITS UPON DEFAULT

11.1. Return of Units. If this Lease shall terminate pursuant to § 10 hereof, the Lessee shall forthwith deliver possession of the Units to the Owner-Trustee and shall give prompt telegraphic and written notice to the Association of American Railroads and all railroads having

possession of any Unit so to return such Units. Each Unit returned to the Owner-Trustee pursuant to this § 11 shall (i) be in the condition required by § 9.3 hereof and (ii) meet the standards then in effect under the Interchange Rules of the Association of American Railroads, if applicable. For the purpose of delivering possession of any Unit or Units to the Owner-Trustee as above required, the Lessee shall at its own cost, expense and risk:

(a) forthwith and in the usual manner place such Units upon such storage tracks as shall reasonably be designated by the Owner-Trustee,

(b) cause such units to be stored on such tracks without charge for insurance, rent or storage until such Units have been sold, leased or otherwise disposed of by the Owner-Trustee, but not in any event for longer than 270 days, and

(c) cause the Units to be moved to the nearest interchange point or points as shall be designated by the Owner-Trustee.

The assembling, delivery, storage and transporting of the Units as hereinbefore provided shall be at the expense and risk of the Lessee and are of the essence of this Lease, and, upon application to any court of equity having jurisdiction in the premises, the Owner-Trustee shall be entitled to a decree against the Lessee requiring specific performance of the covenants of the Lessee so to assemble, deliver, store and transport the Units. During any storage period, the Lessee will permit the Owner-Trustee or any person designated by it, including the authorized representative or representatives of any prospective purchaser of any such Unit, to inspect the same. In the event that the Units or any thereof are sold the Lessee shall pay to the Owner-Trustee the per diem interchange for each such Unit which shall not have been assembled, delivered and stored, as hereinbefore provided, by the date of such sale for each day from the date of such sale to the date of delivery to the purchaser thereof.

11.2. Owner-Trustee Appointed Agent of Lessee. Without in any way limiting the obligation of the Lessee under the foregoing provisions of this § 11, the Lessee

hereby irrevocably appoints the Owner-Trustee as the agent and attorney of the Lessee, with full power and authority, at any time while the Lessee is obligated to deliver possession of any Unit to the Owner-Trustee, to demand and take possession of such Unit in the name and on behalf of the Lessee from whomsoever shall be in possession of such Unit at the time.

§ 12A. ASSIGNMENT; POSSESSION AND USE

12A.1. Assignment; Consent. This Lease shall be assignable in whole or in part by the Owner-Trustee without the consent of the Lessee, provided that such assignee is the Vendor or a financial institution with a combined capital and surplus of at least \$50,000,000, but the Lessee shall not be under any obligation to any assignee of the Owner-Trustee other than the Vendor except upon written notice of such assignment from the Owner-Trustee and no greater obligations will be imposed on the Lessee on account of such assignment. All the rights of the Owner-Trustee hereunder (including, but not limited to, the rights under §§ 6, 7 and 10 and the rights to receive the rentals payable under this Lease) shall inure to the benefit of the Owner (other than indemnities payable to the Owner-Trustee in its individual capacity) and the respective assigns of the Owner and the Owner-Trustee.

12A.2. Lessee's Right To Use the Units. (1) So long as no Event of Default exists hereunder, the Lessee shall be entitled to the possession and use of the Units in accordance with the terms of this Lease and the CSA, subject to the provisions of § 4.2 of this Lease. The Lessee agrees to use the Units solely within the United States of America except that the Lessee may use the Units in Canada if, but only if:

(a) the use of such Units in Canada does not cause such Units to be property which is used predominantly outside the United States within the meaning of Section 48(a)(2) of the Internal Revenue Code of 1954, as amended, and

(b) the use of such Units in Canada is exclusively within the provinces of Alberta, Saskatchewan, Ontario and Manitoba and the Lessee does not use or permit any use whatsoever of any Unit in Canada at any time outside of those four provinces;

provided, however, that the Lessee may use such Units in locations in Canada outside of the provinces of Alberta, Saskatchewan, Ontario and Manitoba if the Lessee (i) gives notice to the Vendor and the Owner-Trustee of the Lessee's intent to use the Units in locations in Canada outside of the provinces of Alberta, Saskatchewan, Ontario and Manitoba not less than 30 days prior to the commencement of such use and (ii) prior to such use the Lessee delivers an opinion of counsel to the Vendor and the Owner-Trustee, in form, scope and substance satisfactory to the Vendor and the Owner-Trustee, to the effect that the Lessee has caused all publications, notices and filings to be made as shall be necessary to protect the interest of the Owner-Trustee in the Units in such locations in Canada outside of the provinces of Alberta, Saskatchewan, Ontario and Manitoba and to protect the security interest of the Vendor in the Units and in the income and proceeds of the Equipment while any Units are in such locations in Canada outside of the provinces of Alberta, Saskatchewan, Ontario and Manitoba.

(2) The Lessee shall not assign or transfer its leasehold interest under this Lease in the Units or any of them without the prior written consent of the Trustee and the Agent, except as provided in paragraph (3) of this § 12A.2; and the Lessee shall not part with the possession or control of, or suffer or allow to pass out of its possession or control, any of the Units without the prior written consent of the Owner-Trustee and the Vendor except as provided in said paragraph (3).

(3) So long as no Event of Default exists hereunder, the Lessee shall be entitled to the possession and use of the Units by it or any affiliate upon lines of any railroad or other trackage over which railroad equipment is regularly operated and shall be entitled to permit the use of the Units upon connecting and other carriers in the usual interchange of traffic or pursuant to run-through or trip-lease agreements and to sublease the Units, but only upon and subject to all the terms and conditions of this Lease and the CSA; provided, however, that the Lessee shall not assign, sublease or use or permit the assignment, sublease or use of any Unit except upon the terms and conditions of this Lease and the CSA, nor shall the Lessee assign or sublease to or permit the sublease or use of the Units by any person in whose hands such Units would not qualify as "section 38 property" within the meaning of said Code. Any sublease permitted by this paragraph shall be expressly subordinate to the right and remedies of the Vendor under the CSA and the Owner-Trustee under this Lease in respect of the Units.

covered by such sublease and no such sublease shall relieve the Lessee of any of its obligations hereunder which, notwithstanding any such sublease, shall remain in full force and effect.

12A.3. Lessee's Duty To Discharge Encumbrances.

The Lessee, at its own expense, will as soon as possible cause to be duly discharged any lien, charge, security interest or other encumbrance (other than an encumbrance resulting from claims against the Owner-Trustee or the Vendor not related to the ownership or leasing of, or the security interest of the Vendor in, the Units) which may be imposed during the term hereof, during the period the Lessee is obligated to pay rental hereunder or during the period any Unit is in the possession of the Lessee following default, on or with respect to any Unit (including any accession thereto) or the interest of the Owner-Trustee, the Vendor or the Lessee therein; except that this covenant will not be breached by reason of liens, assessments or governmental charges or levies, in each case not due and delinquent, or undetermined or inchoate materialman's, mechanic's, workmen's, repairmen's or other like liens arising in the ordinary course of business in each case not delinquent, and furthermore, the Lessee shall be under no obligation to discharge any such lien, charge, security interest or encumbrance so long as it is contesting the same in good faith and by appropriate legal proceedings and the Owner-Trustee or the Agent advise the Lessee in writing that the failure to discharge the same does not adversely affect the title, property or rights of Owner-Trustee or the Agent under the Documents.

12A.4. Merger, Acquisition or Consolidation.

Nothing in this § 12A shall be deemed to restrict the right of the Lessee to assign or transfer its leasehold interest under this Lease in the Units or possession of the Units to any solvent corporation incorporated under the laws of any state of the United States of America or the District of Columbia (which shall have specifically assumed the obligations of the Lessee hereunder and under the Consent by an appropriate instrument in writing) into or with which the Lessee shall have become merged or consolidated or which shall have acquired the property of the Lessee as an entirety or substantially as an entirety, provided that such assignee or transferee will not, upon the effectiveness of such merger, consolidation or acquisition be in default under any provision of this Lease.



12A.5. Mileage. During the term of this lease the Lessee shall receive, insofar as applicable law and regulations allow, all mileage allowances, rentals and/or compensation payable by carriers by reason of the use of any unit (hereinafter called "mileage") leased to the Lessee hereunder. It is understood and agreed that if for any reason the Owner-Trustee receives any mileage, then (unless an Event of Default shall have occurred and be continuing) the Owner-Trustee shall promptly remit such mileage to the Lessee.

#### § 12B. RENEWAL OPTIONS

12B.1. Renewal for Successive Period. The parties hereto contemplate that at the end of the original term of this Lease, the Owner-Trustee will hold the Units for re-lease. Prior to the delivery of the Units pursuant to § 2 hereof, the Owner-Trustee will enter into an agreement ("Option") with Tiger Financial Services, Inc. ("Tiger"), pursuant to which the Owner-Trustee will grant to Tiger the option to lease all but not fewer than all the Units for a one year term ("Tiger's Lease") commencing at the end of the original term of this Lease on such terms as are set forth in the Option and the right to purchase all but not fewer than all the Units at the end of the original term of this Lease and at the end of Tiger's Lease. The Owner-Trustee will give the Lessee prompt written notice in the event that Tiger exercises any of its rights under the Option. In the event that Tiger purchases the Equipment at the end of the original term of this Lease or at the end of Tiger's Lease, the Lessee will have no renewal rights under this Lease. Provided that this Lease has not been earlier terminated and the Lessee is not in default hereunder and no event of default or event which with the lapse of time and/or the demand or the giving of notice provided hereunder could constitute an Event of Default hereunder, and provided that Tiger shall not have exercised its Option, then the Lessee may by written notice delivered to the Owner-Trustee not less than 120 days nor more than 270 days prior to the end of the original term (or the First Extended Term (as hereinafter defined), if any, as applicable) of this Lease elect to extend such term of this Lease in respect of not less than all the Units then covered by this Lease (a) for a period of five years commencing on the scheduled expiration of the original term of this Lease at a "Fair Market Rental" payable, in arrears, in semiannual payments on the day such rentals were payable for the Units during the original term

of this Lease or (b) for a period of three years commencing on the scheduled expiration of the original term of this Lease ("First Extended Term") followed by a period of two years commencing on the scheduled expiration of the First Extended Term at a "Fair Market Rental" (to be determined before each additional term) payable, in arrears, in semi-annual payments on the day such rentals were payable for the Units during the original term of this Lease. In the event that Tiger exercises its Option to lease the Units, then the Lessee may by written notice delivered to the Owner-Trustee not less than 120 days or more than 270 days prior to the end of Tiger's Lease (or the first two year renewal term, if any, as applicable) elect to renew this Lease for all the Units then subject to Tiger's Lease (x) for a period of four years commencing on the scheduled expiration of Tiger's Lease at a "Fair Market Rental" payable, in arrears, in semiannual payments on the day such rentals were payable for the Units in each year of the original term of this Lease or (y) for two additional two-year terms commencing on the scheduled expiration of Tiger's Lease at a "Fair Market Rental" (to be determined before each additional term) payable, in arrears, in semi-annual payments on the day such rentals were payable for the Units during the original term of this Lease. In the event of any such extension or renewal, the Casualty Value payable in respect of a Casualty Occurrence involving any Unit shall be as agreed upon by the Owner-Trustee and the Lessee, and in the event that no agreement is reached, the Casualty Value will be determined according to the procedures outlined in § 12B.2 below regarding Fair Market Rental.

#### 12B.2. Determination of Fair Market Rental.

(1) The Fair Market Rental for any extended term of this Lease shall be equal to the rental which would obtain in an arm's-length transaction between an informed and willing lessee (other than a lessee currently in possession) and an informed and willing lessor under no compulsion to lease, and costs of removal from the location of current use shall not be a deduction from such rental.

(2) If, within 25 days from the giving of notice by the Lessee of the Lessee's election to extend the term of this Lease, the Owner-Trustee and the Lessee are unable to agree upon a determination of the Fair Market Rental of the Units, either party to such determination may give written notice to the other ("Appraisal Notice") requesting determination of such Fair Market Rental by an appraisal procedure. The parties shall consult for the

purpose of appointing a qualified independent appraiser by mutual agreement. If no such appraiser is so appointed within 15 days after the Appraisal Notice, each party shall appoint an appraiser within 20 days after the Appraisal Notice, and the two appraisers so appointed shall within 30 days after the Appraisal Notice appoint a third independent appraiser. If no such third appraiser is appointed within 30 days after the Appraisal Notice, either party may apply to make such appointment to the American Arbitration Association and both parties shall be bound by any appointment so made. Any appraiser or appraisers appointed pursuant to the foregoing procedure shall be instructed to determine the Fair Market Rental of the Units subject to the proposed extended term within 75 days after the Appraisal Notice. If the parties shall have appointed a single appraiser or if either party shall have failed to appoint an appraiser, the determination of Fair Market Rental of the single appraiser appointed shall be final. If 3 appraisers shall be appointed, the determination of the appraiser which differs most from the other 2 appraisers shall be excluded, the remaining 2 determinations shall be averaged and such latter average shall be final and binding upon the parties hereto as the Fair Market Rental. The appraisal proceedings shall be conducted in accordance with the Commercial Arbitration Rules of the American Arbitration Association but not under its auspices as in effect on the date hereof, except as modified hereby. The provision for this appraisal procedure shall be the exclusive means of determining Fair Market Rental and shall be in lieu of any judicial or other procedure for the determination thereof, and each party hereto hereby consents and agrees not to assert any judicial or other procedures. The expenses of the appraisal procedure shall be borne equally by the Lessee and the Owner-Trustee or Tiger, as the case may be.

12C. Right of First Refusal. Provided that this Lease has not been earlier terminated and the Lessee is not in default hereunder and subject to the rights of Tiger to purchase the Units at the end of the original term of this Lease and at the end of Tiger's Lease, in the event the Owner-Trustee elects to sell any Units to third parties at the expiration of the original or extended term of this Lease, the Lessee shall be given written notice of such intention not less than 60 days prior to the expiration of such term. In the event that the Owner-Trustee shall receive, prior to removal of the Units at the end of such

term of the Lease, a bona fide offer in writing from another party unrelated to the Lessee to purchase the Units and the Owner-Trustee elects to sell the Units pursuant to such offer, the Owner-Trustee shall give prompt written notice to the Lessee of such offer. Such notice shall include the price and the terms and conditions of payment offered by the other party in writing to the Owner-Trustee. The Lessee shall have the sole right and option to purchase the Units for cash at the price at which the Units are proposed to be sold or under the other terms and conditions of payment offered by the other party, as hereinafter provided. Within 10 business days of receipt of notice from the Owner-Trustee, the Lessee shall exercise such purchase right by delivery to the Owner-Trustee of a written notice specifying a date of purchase, which date shall not be later than the later of (i) 15 days after the date of delivery of such notice by the Lessee to the Owner-Trustee or (ii) 90 days after the expiration of such term of this Lease. In the event that the Lessee shall have delivered a notice of its election to purchase the Units, this Lease (including the obligation to pay rent) shall be further extended upon the same terms and conditions set forth herein from the date such notice is delivered to the Owner-Trustee until the date of such purchase.

§ 13. RETURN OF UNITS UPON  
EXPIRATION OF TERM

On or prior to the termination of the term of this Lease (or any renewal pursuant to § 12B hereof) the Lessee will, at its own cost and expense, at the request of the Owner-Trustee, deliver possession of the Units to the Owner-Trustee upon such storage tracks as the Owner-Trustee may reasonably designate (but in no event at more than three locations), or, in absence of such designation, as the Lessee may select, and permit the Owner-Trustee to store such Units on such tracks for a period not exceeding 60 days from the date at which at least 90% of the Units then subject to this Lease are first placed in storage; the assembly, delivery, storage and transporting of such Unit to be at the expense and risk of the Lessee. Arrival of a Unit at the designated point shall constitute "Return" for the purposes hereof. During any such storage period the Lessee will permit the Owner-Trustee or any person designated by it, including the authorized representative or representatives of any prospective purchaser or lessee of such Unit, to

inspect the same at the storage locations; provided, however, that the Lessee shall not be liable except in the case of negligence or intentional act of the Lessee or of its employees or agents and, except to the extent otherwise provided by law, for any injury to or the death of any person exercising, either on behalf of the Owner-Trustee or any prospective purchaser or lessee, the rights of inspection granted under this sentence. The assembly, delivery, storage and transporting of the Units as hereinbefore provided are of the essence of this Lease, and upon application to any court of equity having jurisdiction in the premises, the Owner-Trustee shall be entitled to a decree against the Lessee requiring specific performance of the covenants of the Lessee so to cause the assembly, delivery, storage and transporting of the Units. Each Unit returned to the Owner-Trustee pursuant to this § 13 shall (i) be in the condition required by § 9.3 hereof, (ii) have attached or affixed thereto any part title to which is in the Owner-Trustee pursuant to § 9 hereof and have removed therefrom at the Lessee's expense any part title to which is in the Lessee or any other person pursuant to such § 9 and (iii) meet the standards then in effect under the Interchange Rules of the Association of American Railroads, if applicable, provided that the Lessee shall not be required to make any additions, modifications or improvements which would not be required of the Lessee if the Lessee continued to operate the Units. If any Unit suffers a Casualty Occurrence during any storage period provided for in this § 13, the Lessee shall pay to the Owner-Trustee the Casualty Value of such Unit as determined in accordance with § 7 hereof. The Lessee shall pay rental at the rate of .031674% of the Purchase Price of such Unit per day for any Unit not returned to the Owner-Trustee immediately upon expiration of the termination of the initial or any extended term of this Lease.

#### § 14. RECORDING

The Lessee, at its own expense, will cause this Lease, the CSA, the Lease Assignment and any assignment hereof or thereof to be filed and recorded (i) with the Interstate Commerce Commission in accordance with 49 U.S.C. § 11303 and (ii) in the applicable offices of Alberta, Saskatchewan, Ontario and Manitoba. The Lessee will undertake the filing, registering, deposit and recording required of the Owner-Trustee under the CSA and will from time to time

do and perform any other act and will execute, acknowledge, deliver, file, register, record (and will refile, reregister, deposit and redeposit or rerecord whenever required) any and all further instruments required by law or reasonably requested by the Owner-Trustee or the Vendor for the purpose of proper protection, to their satisfaction, of the Vendor's and the Owner-Trustee's respective interests in the Units, or for the purpose of carrying out the intention of this Lease, the CSA or the Lease Assignment.

The Lessee will promptly furnish to the Vendor and the Owner-Trustee evidence of all such filing, registering, depositing or recording, and an opinion or opinions of counsel for the Lessee with respect thereto satisfactory to the Vendor and the Owner-Trustee. This Lease and the CSA shall be filed and recorded with the Interstate Commerce Commission prior to the delivery and acceptance hereunder of any Unit.

#### § 15. INTEREST ON OVERDUE RENTALS

Anything to the contrary herein contained notwithstanding, any nonpayment of rentals and other obligations due hereunder shall result in the obligation on the part of the Lessee promptly to pay an amount equal to interest at a rate equal to the lesser of 15% per annum or the highest rate as may be legally enforceable on the overdue rentals and other obligations for the period of time during which they are overdue.

#### § 16. NOTICES

Any notice required or permitted to be given by either party hereto to the other shall be deemed to have been given when delivered to such other party or deposited in the United States mails, first-class postage prepaid, addressed as follows:

if to the Owner-Trustee, at 130 South LaSalle Street, Chicago, Illinois 60603, Attention of Corporate Trust Officer; with a copy to the Owner at 300 North Ervay, Republic National Bank Building, Dallas, Texas 75201, Attention of the President;

if to the Lessee, at P.O. Box 1219R, Columbia Road and Park Avenue, Morristown, New Jersey 07960, Attention of Assistant Treasurer;

or addressed to any party at such other address as such party shall hereafter furnish to the other parties in writing. Copies of each such notice shall be given to the Vendor at 135 South La Salle Street, Chicago, Illinois 60690, attention of Corporate Trust Officer or such other address designated by the Vendor. Any certificate, document or report required to be furnished by any party hereto to the other parties shall be delivered to the address set forth above for such party. Any notice to the Lessee by the Vendor regarding the Lessee's failure to perform any obligation hereunder shall also be furnished by the Lessee to the Owner-Trustee.

§ 17. SEVERABILITY; EFFECT AND  
MODIFICATION OF LEASE;  
THIRD-PARTY BENEFICIARIES

17.1. Severability. Any provision of this Lease which is prohibited or unenforceable in any jurisdiction shall be, as to such jurisdiction, ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof, and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction.

17.2. Effect of Modification of Lease. This Lease and the Indemnity Agreement exclusively and completely state the rights of the Owner-Trustee and the Lessee with respect to the leasing of the Units and supersede all other agreements, oral or written, with respect thereto, except the Participation Agreement. No variation or modification of this Lease and no waiver of any of its provisions or conditions shall be valid unless in writing and signed by duly authorized signatories for the Owner-Trustee and the Lessee.

17.3. No Third-Party Beneficiaries. Nothing in this Lease shall be deemed to create any right in any person not a party hereto (other than the Owner, the Vendor and the permitted successors and assigns of a party) and this instrument shall not be construed in any respect to be a contract in whole or in part for the benefit of any third party except as aforesaid.

#### § 18. EXECUTION

This Lease may be executed in several counterparts, such counterparts together constituting but one and the same instrument, but the counterpart delivered to the Vendor pursuant to the Lease Assignment shall be deemed to be the original and all other counterparts shall be deemed duplicates thereof.

#### § 19. IMMUNITIES: NO RECOURSE

It is expressly understood and agreed by and between the parties hereto, anything herein to the contrary notwithstanding, that each and all the representations, undertakings, covenants, warranties and agreements herein made on the part of the Owner-Trustee are made and intended not as personal representations, undertakings, covenants, warranties and agreements by Exchange National Bank of Chicago, or for the purpose or with the intention of binding said bank personally but are made and intended for the purpose of binding only the Trust Estate as such term is used in the Trust Agreement and this Lease is executed and delivered by said national association not in its own right but solely in the exercise of the powers expressly conferred upon it as trustee under the Trust Agreement; and except in the case of gross negligence or wilful misconduct, no personal liability or personal responsibility is assumed by or shall at any time be asserted or enforceable against said bank on account of this Lease or on account of any representations, undertaking, covenant, warranty or agreement of the Owner-Trustee, either expressed or implied, all such personal liability against either said bank or the Owner, if any, being expressly waived and released by the Lessee, the Vendor and by all persons claiming by, through or under either of them.

#### § 20. LAW GOVERNING

The terms of this Lease and all rights and obligations hereunder shall be governed by the laws of the State of Illinois; provided, however, that the parties shall be entitled to all rights conferred by 49 U.S.C. § 11303.

IN WITNESS WHEREOF, the parties hereto have exe-



cuted or caused this instrument to be executed as of the date first above written.

EXCHANGE NATIONAL BANK OF  
CHICAGO, not in its indi-  
vidual capacity, but solely  
as Owner-Trustee, under the  
Trust Agreement dated as of  
the date hereof with Republic  
National Leasing Corporation,

by

[CORPORATE SEAL]

\_\_\_\_\_  
Authorized Officer

Attest:

\_\_\_\_\_  
Authorized Officer

ALLIED CHEMICAL CORPORATION,

by

[CORPORATE SEAL]

Attest:

STATE OF NEW JERSEY, )  
 ) ss.:  
COUNTY OF MORRIS, )

On this                    day of                    1981, before me personally appeared                    , to me personally known, who, being by me duly sworn, says that he is the                    of ALLIED CHEMICAL CORPORATION, a New York corporation, that one of the seals affixed to the foregoing instrument is the corporate seal of said Corporation, that said instrument was signed and sealed on behalf of said Corporation by authority of its Board of Directors and he acknowledged that the execution of the foregoing instrument was the free act and deed of said Corporation.

Notary Public

[Notarial Seal]

## My Commission Expires

STATE OF ILLINOIS, )  
 ) ss.:  
COUNTY OF COOK, )

On this                      day of                      1981, before me personally appeared                      , to me personally known, who, being by me duly sworn, says that he is an Authorized Officer of EXCHANGE NATIONAL BANK OF CHICAGO, that one of the seals affixed to the foregoing instrument is the corporate seal of said national association, that said instrument was signed and sealed on behalf of said national association by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said national association.

Notary Public

[Notarial Seal]

My Commission Expires

Schedule A to the Lease

<u>Type</u>	<u>Quantity</u>	<u>Lessee's Road Numbers (Both Inclusive)</u>
13,500 gallon coiled insulated tank cars DOT 111A 100W3	145	AFPX 413213- 413357

## Schedule B to the Lease

## CASUALTY VALUES

<u>Rental Payment Date</u>	<u>Percentage of Purchase Price*</u>
1/2/82	104.5170%
7/2/82	105.6127
1/2/83	105.7243
7/2/83	106.3625
1/2/84	105.8815
7/2/84	106.0857
1/2/85	98.8744
7/2/85	98.5588
1/2/86	97.0746
7/2/86	96.3259
1/2/87	88.1696
7/2/87	86.9099
1/2/88	84.5469
7/2/88	82.8724
1/2/89	73.9128
7/2/89	71.7569
1/2/90	68.7025
7/2/90	66.1975
1/2/91	62.9343
7/2/91	60.1699
1/2/92	56.7192
7/2/92	53.6778
1/2/93	50.0265
7/2/93	46.6872
1/2/94	42.8633
7/2/94	39.5243
1/2/95	35.6347
7/2/95	31.9355
1/2/96	28.0000

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\* As defined in the CSA.

Schedule C to the Lease

DETERMINATION OF TERMINATION VALUES

<u>Rental Payment Date</u>	<u>Percentage of Purchase Price*</u>
1/2/89	76.9660%
7/2/89	74.4274
1/2/90	71.0050
7/2/90	68.2137
1/2/91	64.6757
7/2/91	61.6546
1/2/92	57.9607
7/2/92	54.6949
1/2/93	50.8350
7/2/93	47.2797
1/2/94	43.2549
7/2/94	39.7519
1/2/95	35.7392
7/2/95	31.9625
1/2/96	28.0000

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\* As defined in the CSA.

ASSIGNMENT OF LEASE AND AGREEMENT dated as of March 15, 1981, ("Assignment"), by and between EXCHANGE NATIONAL BANK OF CHICAGO ("Owner-Trustee"), acting not in its individual capacity but solely as trustee under the Trust Agreement dated as of the date hereof with Republic National Leasing Corporation, and LaSalle National Bank ("Agent") as Agent for certain Investors under a Participation Agreement dated as of the date hereof ("Investors").

The Owner-Trustee is entering into a Conditional Sale Agreement dated as of the date hereof ("CSA") with Trinity Industries, Inc. ("Trinity"), providing for the sale to the Owner-Trustee of such units of railroad equipment ("Units") described in Annex B thereto as are delivered to and accepted by the Owner-Trustee thereunder.

The Owner-Trustee and Allied Chemical Corporation ("Lessee") have entered into a Lease of Railroad Equipment dated as of the date hereof ("Lease") providing for the leasing by the Owner-Trustee to the Lessee of the Units.

NOW, THEREFORE, in consideration of the premises and of the payments to be made and the covenants herein-after mentioned to be kept and performed, the parties hereto agree as follows:

1. The Owner-Trustee hereby assigns, transfers and sets over unto the Agent, as collateral security for the payment and performance of the obligations of the Owner-Trustee under the CSA, all the right, title and interest, powers, privileges, and other benefits of the Owner-Trustee under the Lease, including, without limitation, the immediate right to receive and collect all rentals, profits and other sums payable to or receivable by the Owner-Trustee from the Lessee whether as rent, casualty payment, indemnity, liquidated damages or otherwise, except for amounts payable to the Owner-Trustee (as Trustee or in its individual capacity) or the Owner (as defined in the CSA) pursuant to § 6 or 9 of the Lease (such moneys being hereinafter called the "Payments"), and the right to make all waivers and agreements, to give all notices, consents and releases, to take all action upon the happening of an Event of Default specified in the Lease, and to do any and all other things whatsoever which the Owner-Trustee is or may become entitled to do under

the Lease. In furtherance of the foregoing assignment, the Owner-Trustee hereby irrevocably authorizes and empowers the Agent in its own name, or in the name of its nominee, or in the name of the Owner-Trustee or as its attorney, to ask, demand, sue for, collect and receive any and all Payments to which the Owner-Trustee is or may become entitled to under the Lease, and to enforce compliance by the Lessee with all the terms and provisions thereof.

The Agent agrees to accept any Payments made by the Lessee for the account of the Owner-Trustee pursuant to the Lease. To the extent received, the Agent will apply such Payments to satisfy the obligations of the Owner-Trustee under the CSA, and to provide for the payments required to be made by the Owner-Trustee pursuant to the final paragraph of § 9.1 of the Participation Agreement, and, so long as no Event of Default shall have occurred and be continuing under the CSA, any balance shall be paid to the Owner-Trustee on the same date such Payment is applied to satisfy such obligations of the Owner-Trustee, by check mailed to the Owner-Trustee on such date or, upon written request of the Owner-Trustee, by bank wire to the Owner-Trustee at such address as may be specified to the Agent in writing, and such balance shall be retained by the Owner-Trustee. If the Agent shall not receive any rental payment under the first paragraph of § 3 of the Lease when due, the Agent shall notify the Owner-Trustee at the address set forth in the Lease; provided, however, that the failure of the Agent so to notify the Owner-Trustee shall not affect the obligations of the Owner-Trustee hereunder or under the CSA.

2. This Assignment is executed only as security and, therefore, the execution and delivery of this Assignment shall not subject the Agent to, or transfer, or pass, or in any way affect or modify the liability of the Owner-Trustee under the Lease, it being understood and agreed that notwithstanding this Assignment or any subsequent assignment, all obligations of the Owner-Trustee to the Lessee shall be and remain enforceable by the Lessee, its successors and assigns, against, and only against, the Owner-Trustee or persons other than the Agent.

3. The Owner-Trustee will faithfully abide by, perform and discharge each and every obligation, covenant and agreement which the Lease provides is to be performed

by the Owner-Trustee; without the written consent of the Agent, the Owner-Trustee will not anticipate the rents under the Lease or waive, excuse, condone, forgive or in any manner release or discharge the Lessee thereunder of or from the obligations, covenants, conditions and agreements to be performed by the Lessee, including, without limitation, the obligation to pay the rents in the manner and at the time and place specified therein or enter into any agreement amending, modifying or terminating the Lease, and the Owner-Trustee agrees that any amendment, modification or termination thereof without such consent shall be void.

4. The Owner-Trustee does hereby constitute the Agent the true and lawful attorney of the Owner-Trustee, irrevocably, with full power (in the name of the Owner-Trustee, or otherwise), to ask, require, demand, receive and compound any and all Payments due and to become due under or arising out of the Lease to which the Owner-Trustee is or may become entitled, to enforce compliance by the Lessee with all the terms and provisions of the Lease, to endorse any checks or other instruments or orders in connection therewith and to file any claims or take any action or institute any proceedings which to the Agent may seem to be necessary or advisable in the premises.

5. Upon the full discharge and satisfaction of all sums due from the Owner-Trustee under the CSA, this Assignment and all rights herein assigned to the Agent shall terminate, and all estate, right, title and interest of the Agent in and to the Lease shall revert to the Owner-Trustee.

6. The Owner-Trustee will pay and discharge any and all claims, liens, charges or security interests (other than those created by the CSA) on the Lease or the rentals or other payments due or to become due thereunder claimed by any party from, through or under the Owner-Trustee, or its successors and assigns (other than the Agent or any successor trustee), not arising out of the transactions contemplated by the CSA or the Lease (but including tax liens arising out of the receipt of the income and proceeds from the Units), which, if unpaid, might become a claim, lien, charge or security interest on or with respect to the Lease, or such rentals or other payments equal or superior to the interest therein of the Agent, unless the Owner-Trustee shall be contesting the same in good faith by



appropriate proceedings in any reasonable manner and the nonpayment thereof does not, in the reasonable opinion of the Agent, adversely affect such interests of the Agent.

7. The Owner-Trustee will, from time to time, execute, acknowledge and deliver any and all further instruments required by law as reasonably requested by the Agent in order to confirm or further assure the interest of the Agent hereunder.

8. The Agent may assign all or any of the rights assigned to it hereby or arising under the Lease, including, without limitation, the right to receive any Payments due or to become due. In the event of any such assignment, any such subsequent or successive assignee or assignees shall, to the extent of such assignment, enjoy all the rights and privileges and be subject to all the obligations of the Agent hereunder.

9. This Assignment shall be governed by the laws of the State of Illinois, but the parties shall be entitled to all rights conferred by 49 U.S.C. § 11303.

10. The Owner-Trustee shall cause copies of all notices received in connection with the Lease, and all payments hereunder to be promptly delivered or made to the Agent at its address set forth in Article 21 of the CSA, or at such other address as the Agent shall designate.

11. The Agent hereby agrees with the Owner-Trustee that the Agent will not, so long as no Event of Default under the Lease, or event of default under the CSA has occurred and is continuing, exercise or enforce, or seek to exercise or enforce, or avail itself of, any of the rights, powers, privileges, authorizations or benefits which are assigned and transferred by the Owner-Trustee to the Agent by this Assignment, except the right to receive and apply the Payments as provided in Paragraph 1 hereof, and that, subject to the terms of the Lease and the CSA, the Owner-Trustee may, so long as no event of default under the CSA or Event of Default under the Lease has occurred and is continuing, exercise or enforce, or seek to exercise or enforce or avail itself of, such rights, powers, privileges, authorizations or benefits.

12. It is expressly understood and agreed by and between the parties hereto, anything herein to the contrary notwithstanding, that each and all of the representations, undertakings, covenants, warranties and agreements herein

made on the part of the Owner-Trustee are each and every one of them made and intended not as personal representations, undertakings, covenants, warranties and agreements by Exchange National Bank of Chicago or for the purpose or with the intention of binding said national association personally but are made and intended for the purpose of binding only the Trust Estate as such term is used in the Trust Agreement, and this Assignment is executed and delivered by the said national association solely in the exercise of its powers expressly conferred upon it as trustee under the Trust Agreement, and that no personal liability or personal responsibility is assumed by or shall at any time be asserted or enforceable against said national association (except for wilful misconduct or gross negligence of the Owner-Trustee), either expressed or implied, all such personal liability, if any, being expressly waived and released by the Agent and by all persons claiming by, through or under the Agent; provided, however, that the Agent or any person claiming by, through or under it, making claim hereunder, may look to said Trust Estate for satisfaction of the same.

13. This Assignment may be executed in any number of counterparts, all of which together shall constitute a single instrument, but the counterpart delivered to the Agent shall be deemed to be the original counterpart. Although for convenience this Assignment is dated as of the date first above written, the actual dates of execution hereof by the parties hereto are the dates stated in the acknowledgments hereto annexed.

IN WITNESS WHEREOF, the parties hereto have caused this instrument to be executed in their respective corporate names by officers thereunto duly authorized, and their respective corporate seals to be affixed and duly attested, all as of the date first above written.

EXCHANGE NATIONAL BANK OF CHICAGO,  
not in its individual capacity,  
but solely as trustee under the  
Trust Agreement dated as of the  
date hereof with Republic National  
Leasing Corporation,

by

[Corporate Seal]

\_\_\_\_\_  
Authorized Officer

Attest:

\_\_\_\_\_  
Authorized Officer

LA SALLE NATIONAL BANK,  
as Agent,

by

[Corporate Seal]

\_\_\_\_\_  
Vice President

Attest:

\_\_\_\_\_  
Assistant Secretary

STATE OF ILLINOIS, )  
 ) ss.:  
COUNTY OF COOK, )

On this            day of            1981, before me personally appeared           , to me personally known, who, being by me duly sworn, says that he is a Vice President of LA SALLE NATIONAL BANK, that one of the seals affixed to the foregoing instrument is the corporate seal of said national association and that said instrument was signed and sealed on behalf of said national association by authority of its Board of Directors and he acknowledged that the execution of the foregoing instrument was the free act and deed of said national association.

[Notarial Seal]

\_\_\_\_\_  
Notary Public

My Commission expires

STATE OF ILLINOIS, )  
 ) ss.:  
COUNTY OF COOK, )

On this            day of            1981, before me personally appeared           , to me personally known, who, being by me duly sworn, says that he is a            of EXCHANGE NATIONAL BANK OF CHICAGO, that one of the seals affixed to the foregoing instrument is the corporate seal of said national association and that said instrument was signed and sealed on behalf of said national association by authority of its Board of Directors and he acknowledged that the execution of the foregoing instrument was the free act and deed of said national association.

[Notarial Seal]

\_\_\_\_\_  
Notary Public

My Commission expires

## CONSENT AND AGREEMENT

The undersigned, ALLIED CHEMICAL CORPORATION ("Lessee"), the Lessee named in the Lease of Railroad Equipment ("Lease") referred to in the foregoing Assignment of Lease and Agreement ("Lease Assignment"), hereby (a) acknowledges receipt of a copy of the Lease Assignment and (b) consents to all the terms and conditions of the Lease Assignment and agrees that:

(1) it will pay or cause to be paid all rentals, casualty payments, liquidated damages, indemnities (except for indemnities specifically excluded from the Lease Assignment) and other moneys provided for in the Lease (which moneys are hereinafter called the Payments) due and to become due under the Lease or otherwise in respect of the Units leased thereunder, directly to LA SALLE NATIONAL BANK, as Agent ("Agent"), the assignee named in the Lease Assignment, 135 South La Salle Street, Chicago, Illinois 60690, Attention of Corporate Trust Department (or at such other address as may be furnished in writing to the Lessee by the Agent).

(2) the Agent shall be entitled to the benefits of, and to receive and enforce performance of, all the covenants to be performed by the Lessee under the Lease as though the Agent were named therein as the lessor;

(3) the Agent shall not, by virtue of the Lease Assignment or this Consent and Agreement, be or become subject to any liability or obligation under the Lease or otherwise; and

(4) the Lease shall not, without the prior written consent of the Agent, be terminated (except in accordance with its terms) or modified, nor shall any action be taken or omitted by the Lessee the taking or omission of which might result in an alteration or impairment of the Lease or the Lease Assignment or this Consent and Agreement or of any of the rights created by any thereof.

This Consent and Agreement, when accepted by the

Agent by signing the acceptance at the foot hereof, shall be deemed to be a contract under the laws of the State of Illinois and, for all purposes, shall be construed in accordance with the laws of said state.

ALLIED CHEMICAL CORPORATION,

by

[Seal]

Witness:

\_\_\_\_\_

The foregoing Consent and Agreement is hereby accepted, as of March 15, 1981.

LA SALLE NATIONAL BANK,  
as Agent,

by

\_\_\_\_\_  
Vice President